JUDICIAL CITATIONS – AN EMPIRICAL STUDY OF CITATION PRACTICE IN THE NEW ZEALAND COURT OF APPEAL

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In this article, the author examines citations to case law and secondary authorities in a sample of 300 cases in the New Zealand Court of Appeal decided between 1995 and 1999. The author discusses the rationale for citing authorities and considers the citation practice of the Court of Appeal as well as of individual judges. Comparisons are also drawn with previous studies of overseas' courts citation practices.

The author concludes that there are some similarities between the citation practice of the New Zealand Court of Appeal and Australian and North American courts; in particular, the Court of Appeal and Australian and North American courts cite more of their own decisions than those of other courts and prefer their own most recent decisions. An important difference revealed by the study, however, is that the New Zealand Court of Appeal cites more overseas authorities (excluding English cases) than Australian and North American courts.

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I INTRODUCTION

Appeal court judges are expected to give reasons for their decisions.[1] An important feature of judicial decision-making in New Zealand (as in other common law countries) is that most judgments also cite authorities in support of these reasons. This serves an important function in the judicial decision-making process. Citing authorities places the judgment in context and therefore provides justification and a historical rationale for the judge's decision. It has also been argued that citations can be viewed in terms of the "language" that judges use to communicate with each other. In this sense citations to authorities represent an important form of inter-court communication.[2]

Various studies have considered different aspects of the citation practice of courts in Australia, Canada and the United States. There are citation practice studies for the High Court

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1 For statements to this effect by an Australian judge see Michael Kirby "Reasons for Judgment: Always Permissible, Usually Desirable and Often Obligatory" (1994) 12 Australian Bar Review 121; Michael Kirby "*Ex Tempore* Reasons" (1992) 9 Australian Bar Review 93. For statements to this effect by a United States judge see Richard Posner *The Problems of Jurisprudence* (Harvard University Press, Cambridge (Mass), 1990). For statements by a New Zealand judge see Sir Ivor Richardson "The Role of an Appellate Judge" (1981) 5 Otago LR 1.

2 For example, see Gregory Calderia "The Transmission of Legal Precedent: A Study of State Supreme Courts" (1985) 79 American Political Science Review 179; ["The Transmission of Legal Precedent"]; Gregory Calderia "Legal Precedent: Structures of Communication Between State Courts" (1988) 10 Social Networks 29; Peter Harris "Ecology and Culture in the Communication of Precedent Among State Supreme Courts, 1870-1970" (1985) 19 Law and Society Review 449.

of Australia,[3] Federal Court of Australia,[4] Australian state supreme courts,[5] the Supreme Court of Canada,[6] provincial courts of appeal in Canada,[7] the United States Supreme Court,[8]

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3 Paul Von Nessen "The Use of American Precedents by the High Court of Australia, 1901-1987" (1992) 14 Adel LR 181; Russell Smyth "Academic Writing and the Courts: A Quantitative Study of the Influence of Legal and Non-Legal Periodicals in the High Court" (1998) 17 U Tas LR 164 ["Academic Writing and the Courts"]; Russell Smyth "'Other than Accepted Sources of Law'? A Quantitative Study of Secondary Source Citations in the High Court" (1999) 22 UNSWLJ 19 ["Other than Accepted Sources of Law"]; Russell Smyth "Law or Economics? An Empirical Investigation into the Impact of Economics on Australian Courts" Aust Business LR (forthcoming); Russell Smyth "Citations by Court" in Tony Blackshield, Michael Coper and George Williams (eds) *The Oxford Companion to the High Court of Australia* (Oxford University Press, Melbourne, forthcoming).

4 Russell Smyth "The Authority of Secondary Authority: A Quantitative Study of Secondary Source Citations in the Federal Court" G L Rev (forthcoming) ["The Authority of Secondary Authority"].

5 Russell Smyth "What do Judges Cite? An Empirical Study of the 'Authority of Authority' in the Supreme Court of Victoria" (1999) 25 Monash University LR 29 ["What do Judges Cite"]; Russell Smyth "What Do Intermediate Appellate Courts Cite? A Quantitative Study of the Citation Practice of Australian State Supreme Courts" Adel LR (forthcoming) ["What Do Intermediate Appellate Courts Cite"].

6 Vaughan Black and Nicholas Richter "Did she Mention My Name? Citation to Academic Authority by the Supreme Court of Canada 1985-1990" (1993) 16 Dalhousie LJ 377; Peter McCormick "Judicial Citation, The Supreme Court of Canada and the Lower Courts: The Case of Alberta" (1996) 34 Alberta Law Review 870 ["Judicial Citation"]; Peter McCormick "Do Judges Read Books too?: Academic Citations by the Lamer Court 1992-96" (1998) 9 Supreme Court Law Review (Annual) 463; Peter McCormick "The Supreme Court Cites the Supreme Court: Follow-Up Citations on the Supreme Court of Canada, 1989-1993" (1995) 33 Osgoode Hall LJ 453.

7 For example see Peter McCormick "Judicial Authority and the Provincial Courts of Appeal: A Statistical Investigation of Citation Practice" (1993) 22 Manitoba Law Journal 286 ["Judicial Authority"]; Peter McCormick "The Evolution of Coordinate Precedential Citation in Canada: Interprovincial Citations of Judicial Authority 1922-1992" (1994) 32 Osgoode Hall LJ 271 ["The Evolution of Coordinate Precedential Citation"].

8 James Ackers "Thirty Years of Social Science in Supreme Court Criminal Cases" (1990) 12 Law and Policy 1; James Ackers "Social Science in Supreme Court Death Penalty Cases: Citation Practices and their Implications" (1991) 8 Justice Quarterly 421; Neil Bernstein "The Supreme Court and Secondary Source Material: 1965 Term" (1968) 57 Geo LJ 55; Wes Daniels "'Far Beyond the Law Reports': Secondary Source Citations in United States Supreme Court Opinions October Terms 1900, 1940 and 1978" (1983) 76 Law Library Journal 1; Charles Johnson "Citations to Authority in Supreme Court Opinions" (1985) 7 Law and Policy 509; Montgomery Kosma "Measuring the Influence of Supreme Court Justices" (1998) 27 J Legal Studies 333; Chester Newland "Legal Periodicals and the United States Supreme Court" (1959) 7 University of Kansas LR 477; Louis Sirico and Beth Drew "The Citing of Law Reviews by the Supreme Court: An Empirical Study" (1986) 34 UCLA L Rev 131.

the United States Courts of Appeals,[9] and state supreme courts in the United States.[10] There are, however, no studies investigating the citation practice of courts in New Zealand. This article contributes to the literature on citation practice through examining citations to case law and secondary authorities in a sample of 300 cases in the New Zealand Court of Appeal decided over the period 1995 to 1999.[11]

A study, such as this, is of value for three reasons:

(1) The New Zealand Court of Appeal is an important legal institution. As the highest court located in New Zealand, it, in effect, serves as a final court of appeal in most cases and therefore makes decisions that have widespread implications for how the law develops in New Zealand. This makes the reasoning that it adopts and, thus, the authorities that it cites, issues that deserve investigation.

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9 For example see William Landes and Richard Posner "Legal Precedent: A Theoretical and Empirical Analysis" (1976) 19 Journal of Law and Economics 249 ["Legal Precedent"]; William Landes and Richard Posner "Legal Change Judicial Behaviour and the Diversity Jurisdiction" (1980) 9 J Legal Stud 367; William Landes, Lawrence Lessig and Michael Solmine "Judicial Influence A Citation Analysis of Federal Courts of Appeals Judges" (1998) 27 J Legal Stud 271; Louis Sirico and Beth Drew "The Citing of Law Reviews by the United States Courts of Appeals: An Empirical Analysis" (1991) 45 University of Miami Law Review 1051.

10 For example see John H Merryman "The Authority of Authority: What the California Supreme Court Cited in 1950" (1954) 6 Stan L Rev 613 ["The Authority of Authority"]; John H Merryman "Toward a Theory of Citations: An Empirical Study of the Citation Practice of the California Supreme Court in 1950, 1960 and 1970" (1977) 50 S Cal L Rev 381 ["Toward a Theory of Citations"]; Robert Archibald "*Stare Decisis* and the Ohio Supreme Court" (1957) 9 Western Reserve Law Review 23; James Leonard "An Analysis of Citations to Authority in Ohio Appellate Decisions Published in 1990" (1994) 86 Law Library Journal 129; Richard Mann "The North Carolina Supreme Court 1977: A Statistical Analysis" (1979) 15 Wake Forest Law Review 39; William Manz "The Citation Practices of the New York Court of Appeals, 1850-1993" (1995) 43 Buffalo Law Review 121; Mary Bobinski "Citation Sources and the New York Court of Appeals" (1985) 34 Buffalo Law Review 965; William Turner "Comment, Legal Periodicals - Their Use in Kansas" (1959) 7 Kansas Law Review; Fritz Snyder "The Citation Practice of the Montana Supreme Court" (1996) 57 Montana Law Review; Lawrence Friedman, Robert Kagan, Bliss Cartwright and Stanton Wheeler "State Supreme Courts: A Century of Style and Citation" (1981) 33 Stanford Law Review 773 (16 state supreme courts 1870-1970).

11 In this article the term "secondary authorities" refers to all citations other than citations to sources traditionally considered to be primary. Hence, it refers to citations other than citations to administrative regulations, constitutions, case law, court rules, executive orders, parliamentary debates, parliamentary committee reports and statutes. This is consistent with the definition in previous studies - for example, see Bernstein, above n 8, 56; Daniels, above n 8, 3.

(2) Examination of the citation practice of the New Zealand Court of Appeal adds to existing knowledge about the citation practice of courts, in particular for courts outside of North America, for which there are few existing studies.

(3) On a practical level the results should be of value to barristers appearing in the Court of Appeal, law libraries and academics interested in citation practice.

The article is set out as follows. The next part discusses the main reasons judges cite authorities. Judicial and academic attitudes about the extent to which judgments should be documented with authorities are examined in part three. Part four discusses the methodology used in this study and reviews the major citation patterns in the sample cases. Part five looks at which authorities have been cited in more detail. In particular it considers the extent to which the Court of Appeal cited its own previous decisions, decisions of the Judicial Committee of the Privy Council, decisions of English courts, cases decided in courts in countries other than New Zealand or England and secondary authorities. The citation practice of individual judges is examined in part six. The last part summarises the study's findings and emphasises its limitations.

II REASONS FOR CITING AUTHORITIES – RULES OF PRECEDENT

In his studies of the citation practice of courts in Canada, McCormick offers a number of different reasons why judges document their judgments with authorities.[12] This part considers each of these reasons in the context of the New Zealand Court of Appeal.

A Hierarchical Citations

Hierarchical citations are citations to decisions of courts that stand "above" the citing court. As McCormick puts it: "If a higher court had clearly pronounced on a question of law directly relevant to the immediate case, it would constitute a kind of judicial insubordination to ignore it".[13] The Judicial Committee of the Privy Council stands "above" the New Zealand Court of Appeal. The future of appeals from the Court of Appeal to the Privy Council is uncertain, but at the present time the Privy Council is still New Zealand's court of last resort. There is, however, some debate about whether all decisions of the Privy Council are binding on the Court of Appeal. In 1983 Sir Robin Cooke (as he then was) stated: "While the Privy Council appeal is retained we are naturally bound by decisions of their Lordships in New Zealand

12 "Judicial Citation" above n 6, has the most extensive discussion of these reasons.

13 "The Evolution of Coordinate Precedential Citation" above n 7, 273.

cases – there is a grey area as to non-New Zealand cases".[14] There is academic support for the view that the Court of Appeal is only bound by decisions of the Privy Council in New Zealand cases. For example, Laster suggests:[15]

> In light of the liberal view of precedent of the Court of Appeal in *Collector of Customs v Lawrence Publishing Co Ltd*[16] it is possible that the Court of Appeal will consider itself less compelled than before to follow … opinions of the Privy Council, except in instances of appeal from the New Zealand judicial system.

B Consistency Citations

Consistency citations are citations to the previous decisions of the citing court. Sir Ivor Richardson has highlighted the need for consistency in judicial decision-making:[17]

> People need to know … what the law expects of them if they are able to plan their affairs with some assurance that they are not running into legal snares. So the body of legal decisions of the past should be a reasonably reliable guide.

The citation of previous authorities ensures that the parties to an action are able to see that the decision in a particular case is based on pre-existing rules. Consistent with this rationale, the Court of Appeal follows a loose form of *stare decisis*, but it is not strictly bound by its previous decisions. The most recent cases to consider this issue are *Lawrence* and *R v Hines*.[18] In *Hines* each member of the Court of Appeal endorsed the view of Richardson J in *Lawrence*:[19]

> [W]e should go no further than indicate that this Court will ordinarily follow its earlier decisions, but will be prepared to review and affirm, modify or overrule an earlier decision where it is satisfied it should do so, but without attempting to categorise in advance the class of cases in which it will intervene.

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14 Sir Robin Cooke "Divergences – England, Australia and New Zealand" [1983] NZLJ 297, 297.

15 Daniel Laster "Unreported Judgments and Principles of Precedent in New Zealand" (1988) 6 Otago LR 263, 271-272.

16 *Collector of Customs v Lawrence Publishing Co Ltd* [1986] 1 NZLR 404 (CA).

17 Richardson, above n 1, 8.

18 *R v Hines* [1997] 3 NZLR 529 (CA).

19 *Lawrence* [1986] 1 NZLR 404, 414-415 (CA).

C Deference Citations

Deference citations are citations to English courts, other than the Privy Council. Decisions of the House of Lords and the English Court of Appeal are not binding on the New Zealand Court of Appeal, but are of high persuasive value.[20] This is similar to the position in Australia and Canada and reflects the historical role of the House of Lords in the development of the common law throughout the Commonwealth. The socio-legal conditions in New Zealand, however, are different to those in England, which means that although decisions of English courts are entitled to great respect, it is up to the Court of Appeal to fashion a common law best suited to the needs of New Zealand. This was recognised by the Privy Council in *Invercargill City Council v Hamlin* when it said: [21]

> [I]n the present case the judges in the New Zealand Court of Appeal were consciously departing from English case law on the ground that the conditions in New Zealand are different. Were they entitled to do so? The answer must surely be "Yes". The ability of the common law to adapt itself to the differing circumstances of the countries in which it has taken root, is not a weakness, but one of its great strengths. Were it not so, the common law would not have flourished as it has with all the common law countries learning from each other.

D Coordinate and Diversity Citations

McCormick defines coordinate citations as "references to the decisions of courts that are neither above nor below the citing court in any judicial hierarchy, but which occupy a similar position within their own judicial hierarchy".[22] Strictly speaking coordinate citations are citations to courts that occupy a similar position in the sense of both being subject to appeal to the same higher authority. In this restricted sense coordinate citations are to other courts subject to appeal to the Privy Council, such as decisions of the Supreme Court of Canada before 1949 and decisions of the High Court of Australia before 1986. However, given the small number of appeals to the Privy Council, the Court of Appeal increasingly regards itself

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20 *Attorney General for Hong Kong v Reid* [1994] 1 NZLR 1, 9 per Lord Templeman (PC); *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297, 317 per Thomas J (CA); *Pacific Coilcoaters Ltd v Interpress Associates Ltd* [1998] 2 NZLR 19, 32 per Thomas J (CA).

21 *Invercargill City Council v Hamlin* [1996] 1 NZLR 513, 519-520 (PC).

22 "Judicial Citation" above n 6, 880.

as a final court of appeal for most purposes.[23] Taking this more flexible view, coordinate citations include all citations to superior courts in other jurisdictions such as the High Court of Australia and United States Supreme Court. Decisions of these courts are not binding, but are treated as persuasive.

Diversity citations are citations to lower courts in other judicial hierarchies, such as provincial courts of appeal in Canada and state supreme courts in Australia. These decisions are cited depending on their relevance and the persuasive force of their reasoning. Lord Cooke has said that the Court of Appeal gives "special weight to judgments in the High Court of Australia and Supreme Court of Canada. The appellate courts in the Canadian provinces and the Australian state and federal jurisdictions likewise command much respect".[24] Lord Cooke has also emphasised that as the Court of Appeal seeks to fashion a common law suited to New

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23 For example Richardson, above n 1, states:

> Our court is an intermediate court of appeal. However, there have been only some thirty-five appeals to the Privy Council in the last twenty years. Thus, for practical purposes the Court of Appeal is the court of last resort and exercises oversight of the administration of justice in New Zealand.

For a similar statement see *Collector of Customs v Lawrence Publishing Co Ltd* [1986] 1 NZLR 404, 414-415 per Richardson J (CA).

24 Cooke, above n 14, 297.

Zealand citations to courts in Australia and Canada will increase because the experience of these countries is more relevant to New Zealand than that of England. He states:[25]

> The stage has now been reached in which in virtually every major field of law New Zealand law is radically, or at least very considerably, different from English law. In many respects Australian or Canadian legal experience and ideas are now more relevant to us, as we work out our legal destiny.

E Leadership Citations

Leadership citations are citations to the decisions of lower New Zealand courts such as the District Court and High Court. In such citations the objective of the Court of Appeal is to show the lower courts which statements of law are consistent with its views. It achieves this through referring to decisions of lower courts in the process of explaining its decision. In the course of commenting on previous decisions, it might endorse, reject or place conditions on statements of principle and practice enunciated in the lower courts.

F Citations to Secondary Authorities

Secondary authorities are not binding on courts. Hence, why do judges cite secondary authorities? One reason that judges cite journal articles and textbooks is for convenience. Often journal articles and textbooks provide a readily accessible and quick summary of the law on particular issues - in some instances as an interesting aside to the case - when the judge is unable to explore the issues in depth because of pressure on his/her time. Another important reason judges cite secondary authorities is to consult the view of eminent textbook writers to determine the law on a particular matter or explore the evolution of legal principle, particularly if the existing case law is contradictory. Some judges also cite academic authorities to support their interpretation of the law.[26]

III ACADEMIC AND JUDICIAL ATTITUDES TO CITING AUTHORITY

Academic commentators and judges have expressed different views about the extent to which reasons should be documented with authorities. One view is that it is better to focus on

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25 Sir Robin Cooke "Fundamentals" [1988] NZLJ 158. See also Sir Robin Cooke "The New Zealand National Legal Identity" (1987) 3 Canterbury Law Review 171, 182 ["The New Zealand National Legal Identity"]; Lord Cooke of Thorndon *Turning Points of the Common Law* (Sweet & Maxwell, London, 1997) 3 and *Invercargill City Council v Hamlin* [1994] 3 NZLR 513, 523 per Cooke P (CA).

26 For a more detailed discussion of the reasons judges cite secondary authorities see "Other than Accepted Sources of Law" above n 3, 22-24.

principles, rather than cite a long list of authorities. Sir Kenneth Gresson, the first President of the Court of Appeal, was one advocate of this view. Finn states: [27]

> particularly in his later years, he cited little authority, preferring instead to focus on what he saw as the relevant principle. This reflects a continuing view of his that citation of overmuch authority was unhelpful - in one judgment he expressed it thus "many cases were cited in argument, and I have read them, but they tend rather to perplex than to clarify the mind".

A similar view is that it is preferable to cite fewer authorities in order to make judgments shorter and, hence, easier to read. Sir Anthony Mason, former Chief Justice of the High Court of Australia, advocates this position. He suggests that writing simpler judgments will enhance public understanding of the courts: [28]

> Unfortunately judgments do not speak in a language or style that people readily understand ... The judgment is so encrusted with discussion of precedent that it tends to be forbidding. ... [I]f we want people to understand what we are doing, we should write in a way that may make it more possible for them to do so.

This approach has support from academic commentators who criticise excessive use of citations. Wigmore criticised "the courts' over-emphasis on the *techniques* of legal rules, with corresponding under-emphasis on policies, reasons and principles". He states: "Too much of our law is dead bark – at least in judicial opinions. Two-thirds or more of [citations] are needless – dry repetitions of well-settled things".[29] However, other judges stress that although shorter judgments are desirable, sometimes the circumstances of the case make fuller documentation of reasons, including extended citations to authorities, essential. Michael Kirby, a Justice of the High Court of Australia, points out that: [30]

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27 Jeremy Finn "Sir Kenneth Gresson: A Study in Judicial Decision Making" (1997) 6 Canterbury Law Review 481, 490. The case was *In re Liverton, New Zealand Insurance Co Ltd v McKenzie* [1951] NZLR 351, 363 (CA).

28 Sir Anthony Mason "Opening address to the New South Wales Supreme Court Annual Conference 30 April 1993" cited in Mark Duckworth "Clarity and the Rule of Law: The Role of Plain Judicial Language" (1994) 2 Judicial Review 69, 73.

29 John H Wigmore *A Treatise on Evidence* (3 ed, 1940) cited in George Smith "The Current Opinions of the Supreme Court of Arkansas: A Study of Craftmanship" (1947) 1 Arkansas Law Review 89, 90-94.

30 Michael Kirby "On the Writing of Judgments" (1990) 64 ALJ 691, 708.

> brevity at the price of a mechanic view of the law would be unacceptable to many judges today. The use of extrinsic aids to construction and the candid acknowledgment of policy choices which must be made tend to add length to judicial reasons.

Should academic opinion influence judicial decisions and, if so, should they be acknowledged in the discussion of judicial policy?[31] Views on this issue have been mixed. In the 1800s there was judicial criticism of citing academic authorities in England, reflecting a convention that no living author could be cited in court. In one case, Kekewich J stated: "It is to my mind much to be regretted and it is a regret that I believe every Judge on the bench shares, that text-books are more and more quoted in Court".[32] This convention, though, no longer exists and, as a result, most modern judicial comment has been favourable.[33] However, in a recent case in the House of Lords, Lord Goff offered a veiled criticism of Lord Cooke's use of academic authorities in his speech. Lord Goff drew a distinction between academic "opinion" and "analysis". He states:[34]

> I should record that your Lordships' attention was drawn to certain American cases cited in the supplement (1988) to *Prosser and Keeton on Torts,* 5th ed (1984), pp 621-622, which reveal a division of opinion on this point. I intend no disrespect if I say that I did not derive any assistance from this slender and inconclusive line of authority. Since preparing this opinion, I have had the opportunity of reading in draft the speech of my noble and learned friend, Lord Cooke of Thorndon, and I have noticed his citation of academic authority which supports the view that the right to sue in private nuisance in respect of interference with amenities should no longer be restricted to those who have an interest in the affected land. I would not wish it to be thought that I myself have not consulted the relevant academic writings. I have, of course, done so, as is my

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31 See Michael Kirby "Change and Decay or Change and Renewal?" (1998) 7 Journal of Judicial Administration 189, 194.

32 *Union Bank v Munster* (1887) 37 Ch D 51, 54.

33 For positive extra-judicial comment on the value of academic authorities in England and the United States see Frederick Crane "Law Reviews and the Courts" (1935) 4 Fordham Law Review 1; Charles Hughes "Forward" (1941) 50 Yale LJ 737; Stanley Fuld "Judge Looks at the Law Review" (1953) 28 NYU Law R 915; Earl Warren "Comment" (1956) 51 North Western University Law Review 1; Julius Hoffman "Law Reviews and the Bench" (1956) 51 North Western University Law Review 17; Patricia Wald "Teaching the Trade: An Appellate Judge's View of Practice-Oriented Legal Education" (1986) 36 Journal of Legal Education 35; Alfred T Denning "Book Review of Winfield A Textbook of the Law of Tort" (1947) 62 LQR 516.

34 *Hunter v Canary Wharf Ltd* [1997] 2 WLR 684, 697 per Lord Goff of Chieveley (HL).

> usual practice; and it is my practice to refer to those which I have found to be of assistance, but not to refer, critically or otherwise, to those which are not. In the present circumstances, however, I feel driven to say that I found in the academic works which I consulted little more than an assertion of the desirability of extending the right of recovery in the manner favoured by the Court of Appeal in the present case. I have to say … that I have found no analysis of the problem; and in circumstances such as this a crumb of analysis is worth a loaf of opinion.

In a note on this case Cane expresses the view that: [35]

> the right approach for judges to take to the citation of academic literature is to follow best academic practice: if a judge finds in academic writing an idea which is original or originally expressed and wishes to use or to criticise that idea its source should be acknowledged. … Some judges (such as Lord Cooke) may also feel that the opinions of academics are valuable as evidence of the desirability or appropriateness of supporting a particular interpretation of the law. … Judges of this mind should feel free to make suitable references to academic literature for as much as, but for no more, than its worth.

In New Zealand, the Court of Appeal makes regular references to academic authorities in judgments and this practice has received support from academic commentators,[36] but the views of New Zealand judges on the value (or otherwise) of academic opinion is difficult to find. There do not seem to be any instances where New Zealand judges have commented on the issue. However, Farmer offers at least anecdotal evidence to suggest that Lord Cooke was unwilling to let counsel refer him to his extra-judicial writings in Court. Farmer points out that Lord Cooke has been a regular contributor to academic journals, but he was:[37]

> strongly resistant to not so subtle attempts by counsel to refer him to such writings during argument in Court, the resistance allegedly taking the form on one occasion of turning his chair and facing the wall as counsel persisted in the face of an instruction to cease.

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35 Peter Cane "What a Nuisance" (1997) 113 LQR 515, 519.

36 Richard Sutton "Lord Cooke and the Academy: A View From the Law Schools" in Paul Rishworth (ed) *The Struggle for Simplicity in the Law – Essays for Lord Cooke of Thorndon* (Butterworths, Wellington, 1997) 13, 34 states: "There is also an increasing willingness [in the Court of Appeal] to rely on, and acknowledge, academic writings – and I can say, with some feeling, that I am grateful for that".

37 James Farmer "Lord Cooke and Judicial Decision-making: A Perspective From the Commercial Bar" in Paul Rishworth (ed) *The Struggle for Simplicity in the Law – Essays for Lord Cooke of Thorndon* (Butterworths, Wellington, 1997) 53, 62-63.

IV METHODOLOGY AND OVERVIEW OF THE RESULTS

A Data and Methodology

The sample cases in this study were the 300 most recent Court of Appeal decisions reported in the New Zealand Law Reports (NZLR) as of December 1999.[38] The sample size is similar to recent citation studies for Australian courts.[39] The New Zealand Council of Law Reporting selects cases for inclusion in the NZLR on the basis of their possible precedent value. This means that a high proportion of decisions are unreported.[40] The fact that the sample does not include unreported decisions is a limitation, but it is still likely to cover the 300 most important recent cases as of December 1999. As McCormick puts it: "Reported cases probably include a very high proportion of all the decisions sufficiently important to call for reasoned judgment based on authority".[41]

All citations to case law and secondary authorities in the sample cases were counted. Consistent with previous studies, citations to regulations and statutes were excluded.[42] The subject matter of the case dictates citations to these sources; thus it is not an exercise of judicial discretion.[43] If a case, or secondary authority, received repeat citations in the same paragraph it was counted only once. If there were repeat citations to the same source in subsequent paragraphs, though, these were counted again on the basis that the source was being cited for a different proposition and therefore had separate significance.[44] In order to give proper weight to citations in joint judgments, when calculating the total figure citations in joint judgments were multiplied by the number of participating judges. However, in cases where Judge A

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38 The earliest cases in the sample are the last six cases from [1995] 3 NZLR and the most recent cases in the sample are contained in [1999] 2 NZLR. *Controller and Auditor General v Sir Ronald Davidson; KMPG Peat Marwick v Sir Ronald Davidson* and *Brannigan v Sir Ronald Davidson* [1996] 2 NZLR 278 were excluded. Cooke P delivered a single judgment for all three cases, while the other judges (Richardson, McKay, Henry and Thomas JJ) delivered separate judgments for each case.

39 For example see "What do Judges Cite" above n 5 (263 cases); "Other Than Accepted Sources of Law", above n 3 (288 cases); "Academic Writing and the Courts" above n 3 (316 cases); "What do Intermediate Appellate Courts Cite" above n 5 (300 cases).

40 See Laster, above n 15, for an extensive discussion of reporting practice in New Zealand.

41 "The Evolution of Coordinate Precedential Citation" above n 7, 277.

42 See Manz, above n 10, 123; "The Authority of Authority" above n 10, 652.

43 "The Authority of Authority" above n 10, 652 n 131.

44 This is consistent with previous studies. For example see Daniels, above n 8, 3-4

concurred with Judge B and Judge B cited authorities, Judge A was not attributed with having cited that material.[45]

There are four issues that deserve specific mention. First, references to judgments in lower courts in the same case and cases cited in lower courts in the same case were not counted. Second, if a judgment was quoted from another case, that case was counted, but cases cited in the quoted section of the case were not. Third, no distinction was made between positive and negative citations. This might seem to be a shortcoming, but previous studies in North America have found that, unlike academic citations, few judicial citations are either negative or positive. Fourth, in choosing a time frame there were two possibilities. One was to select random cases spaced over an extended period. An advantage of this approach is that it would have provided a long-term trend perspective on the citation practice of the Court. A second alternative was to sample the most recent cases. The advantage of the second approach is that the results are more relevant to libraries and practicing barristers. As one of the objectives is to provide information that these groups could use, the second approach was more appropriate.

B Overview of the Results

The average length of cases in the sample was 10.6 pages. A total of 292 cases (or 97.3 per cent) contained at least one citation. There were 10,490 citations in total. On average, 35 authorities were cited per case, 9.5 authorities were cited per judgment and 1.1 authorities cited per page. Altogether 26 cases or 8.7 per cent of the sample contained dissenting judgments. This figure is similar to the dissent rate in the Supreme Court of Victoria in 1970, 1980 and 1990,[46] but is lower than what most previous studies have found for courts in Australia and the United States.[47] Previous studies have suggested observable differences in citation patterns between majority and dissenting judgments. There are two competing hypotheses. One is that dissenting judgments should contain more citations than majority judgments. The

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45 This follows the practice in all of the Australian citation studies.

46 "What do Judges Cite" above n 5, found that the dissent rate in reported decisions of the Supreme Court of Victoria in 1970, 1980 and 1990 was 8.7 per cent.

47 See "What do Intermediate Appellate Courts Cite" above n 5, dissent rate 14 per cent (six Australian state supreme courts 1996-1999); Friedman et al, above n 10, dissent rates varied between 5.9 per cent and 12.8 per cent (sixteen US state supreme courts 1870-1970); Mann, above n 10, dissent rate 13.5 per cent (North Carolina Supreme Court 1977); Archibald, above n 10, dissent rate 14 per cent (Ohio Supreme Court 1951-1955); Note "The Work of The Michigan Supreme Court and Court of Appeals During the Survey Period: A Statistical Analysis" (1968) 15 Wake Forest Law Review 69, dissent rate 47.1 per cent (Michigan Supreme Court 1967-1968).

reason for this is that the judge is differing from the other members of the court, therefore we would expect him/her to provide full documentation for his/her reasons.[48] An alternative hypothesis is that dissenting judgments should contain fewer citations than other sorts of judgments because it has been argued that stylistically, dissents are often looser than majority judgments.[49] Previous studies of Australian courts are consistent with the first hypothesis,[50] while studies for courts in North America are consistent with the second hypothesis.[51] The results from this study are more consistent with the first hypothesis. There were 12.1 citations per dissenting judgment compared to 9.5 citations per judgment overall.

Table 1 provides a general overview of which authorities the Court of Appeal has cited the most. First, most citations were to its own previous decisions. These accounted for 33 per cent of citations. Second, citations to New Zealand courts (Court of Appeal, High Court and lower courts) made up 46 per cent of citations. If we include citations to decisions of the Privy Council, over 50 per cent of citations by the Court of Appeal were to either its own decisions or decisions of other courts in the same judicial hierarchy. Third, 27 per cent of citations were to English courts, although this figure falls to 23 per cent if we exclude citations to the Privy Council. Fourth, 18 per cent of citations were to courts in countries other than New Zealand and England and, fifth, eight per cent to nine per cent of citations were to secondary authorities.

How do these patterns compare with the High Court of Australia? Citations by the High Court of Australia in 1920, 1940, 1960, 1980 and 1996 are presented in Table 2. The High Court of Australia's citation practice in 1996 provides a good basis for comparison with the results for the Court of Appeal in Table 1. There are some obvious differences. First, in percentage terms the High Court of Australia cites its own decisions and decisions of lower Australian courts more often than the Court of Appeal cites its own decisions and decisions of other New Zealand Courts. Second, the New Zealand Court of Appeal cites decisions of the House of Lords, English Court of Appeal and lower English courts more frequently than the High Court of Australia. Third, the Court of Appeal cites courts in countries other than New Zealand or

48 Mann, above n 10, 44.

49 Friedman et al, above n 10, 785.

50 "What do Judges Cite" above n 5; "What do Intermediate Appellate Courts Cite" above n 5.

51 For example see "Toward a Theory of Citations" above n 10; Mann, above n 10.

England on a more regular basis than the High Court of Australia cites courts in countries other than Australia and England.

A major reason for these differences is that Australia abolished appeals from the High Court to the Privy Council in 1986 while New Zealand, for the time being, retains appeals from the Court of Appeal to the Privy Council. While the Court of Appeal regards itself as being in a position to develop law for New Zealand, this has still provided more opportunities for the High Court of Australia (in particular under Sir Anthony Mason) to develop an Australian jurisprudence.[52] Thus, while senior judges in both Australia and New Zealand have suggested that the time has come to fashion a common law suited to local needs, Australia is more advanced in this process.[53] This could explain the lower percentage of citations to English cases in the High Court of Australia and the larger number of citations to courts of other countries in the Court of Appeal as it looks to other countries to find decisions that are suited to its needs.

Two factors have been identified as having an influence on citation rates. First, the authorities counsel cites in argument could have an important influence on what judges cite. Merryman suggests, "a judge with limited time and a busy schedule is entitled to rely to some extent on the briefs of counsel for the relevant authorities".[54] However, it is difficult to know how important this is in practice. One American study found that less than half of the legal authorities cited in a sample of United States appeal decisions were taken from the argument of counsel.[55] Appeal judges in Canada have said that they are quite willing to cite cases in their judgments not cited in argument, but when such a citation is crucial to the outcome, they normally give counsel a chance to address the case through written submissions.[56] Sir Ivor Richardson has stated that this is similar to the practice followed in the Court of Appeal.[57]

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52 See Cheryl Saunders (ed) *Courts of Final Jurisdiction – The Mason Court in Australia* (Federation Press, Sydney, 1996).

53 See "The New Zealand National Legal Identity" above n 25; Sir Anthony Mason "Future Directions in Australian Law" (1987) 13 Monash University Law Review 149.

54 "The Authority of Authority" above n 10, 651.

55 TB Marvell *Appellate Courts and Lawyers, Information Gathering in the Adversary System* (Conn, Greenswood, Wesport, 1978) 29.

56 Peter McCormick and Ian Greene *Judges and Judging: Inside the Canadian Judicial System* (Toronto, James Lorimer, 1990).

57 Richardson, above n 1, 8.

Having said this, it was not possible to quantify the influence of counsel on which authorities were cited in this study, because the NZLR do not publish a list of the authorities which counsel cite in argument.

Second, studies in the United States have stressed the role of associates in writing the opinion. The role of associates is often emphasised when explaining the observation that the United States Supreme Court cites a high proportion of legal periodicals from elite law schools. For instance, in explaining the fact that the United States Supreme Court cites the *Harvard Law Review* more than other periodicals, Bernstein suggests: "The only plausible explanation for this overwhelming preference for Harvard is a conspiracy of restraint of trade among the Justices' law clerks".[58] However, in New Zealand (as in Australia), the influence of associates on citation patterns is much less pronounced than in the United States as judges write all, or most of, their own judgments.

V TYPES OF AUTHORITIES CITED – COMPARISONS WITH PREVIOUS STUDIES

A Court of Appeal

The Court of Appeal cited its own prior decisions more often than it cites other courts. This is consistent with findings for the High Court of Australia (see Table 2) and the Supreme Court of Canada.[59] Studies for state courts in Australia and provincial courts in Canada have found that both cite the High Court of Australia/Supreme Court of Canada slightly more than their own decisions.[60] Studies in the United States suggest that courts cite their own previous decisions more than the decisions of other courts. The one exception to this is the supreme courts of Idaho and Nevada in the period 1940 to 1970, which cited the California Supreme Court more than their own previous cases; however, both of these are small states within California's judicial sphere of influence.[61]

There are two reasons courts cite a high proportion of their own decisions. One reason is precedent, which was discussed in part two. Employing the terminology used in part two, these are consistency citations. A second reason is that many cases involve interpretation of

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58 Bernstein, above n 8, 67.

59 "Judicial Citation" above n 6.

60 See "Judicial Citation" above n 6; "Judicial Authority" above n 7; "What do Judges Cite" above n 5; "What do Intermediate Appellate Courts Cite" above n 5.

61 See Friedman et al, above n 10, 802.

statute. In these instances the Court of Appeal looks to its own decisions (and then those of lower New Zealand courts) because those of courts in other jurisdictions are of little assistance unless they have equivalent legislation. Friedman, Kagan, Cartwright and Wheeler explain the fact that state supreme courts in the United States have tended to cite more in-state than out-of-state cases over time on this basis. These authors suggest that this "might reflect the relative decline of common law cases on state supreme court dockets and the growth of statutes as a source of law".[62] The influence of the growth in statutes on citation rates is reinforced through a "multiplier effect" where the courts build up their own case law interpreting specific statutes.

Table 1 suggests that the Court of Appeal cites its more recent decisions more than its older decisions. The Court of Appeal cited its own cases decided over the period 1990-1999 more than twice as often as its own cases decided in the period 1980-1989. In turn it cited cases decided in the period 1980-1989 almost five times as often as cases decided between 1970 and 1979 and so on. The tendency to cite fewer and fewer cases from the decade before continues back to the 1930s suggesting that the citation power of cases declines over time. A similar phenomenon has been observed in other citation studies.[63]

There are various explanations for this observation. A partial reason could be that the judges have a preference for citing judgments that they wrote. This might explain the high percentage of cases cited from the 1990s. However, it does not explain why judges would cite a higher proportion of cases decided in the 1970s than cases decided in the 1960s, or a higher proportion of cases decided in the 1950s than cases decided in the 1940s. There must be other reasons. One explanation could be that the stock of older decisions is reduced over time as cases are overruled either by later decisions or statute. Another is that legal opinion evolves over time so that even if earlier decisions are not overruled, their reasoning might not be as persuasive. A final factor is that latter cases are more relevant on the facts because the social context of earlier decisions have changed.[64]

B Privy Council

Hierarchical citations to decisions of the Privy Council were responsible for 3.6 per cent of citations in the Court of Appeal. This is slightly higher than the High Court of Australia in 1996 (2.2 per cent) and the Supreme Court of Canada over the period 1984 to 1994 (2.6 per

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62 Friedman et al, above n 10, 797.

63 For extensive discussion of this phenomenon see "Legal Precedent" above n 9.

64 "Toward a Theory of Citations" above n 10, 395.

cent).[65] One would expect citations to decisions of the Privy Council to be higher in the Court of Appeal than the High Court of Australia and Supreme Court of Canada, given that the Privy Council is not in the same judicial hierarchy as the latter two courts. This said, it might appear surprising that the citation rate to decisions of the Privy Council in the Court of Appeal is not higher than 3.6 per cent. One reason for this is that the stock of new cases to draw on has dwindled, since most of the major Commonwealth countries have abolished appeals to the Privy Council. Apart from appeals from the Court of Appeal itself, nearly all of the Privy Council decisions the Court of Appeal cited were appeals from the Supreme Court of Canada (before 1949) and the High Court of Australia (before 1986). A second reason is that appeals from the Court of Appeal to the Privy Council are infrequent and, as indicated in part two, it seems these are the only decisions that are actually binding on the Court of Appeal. Lord Cooke states: "Privy Council appeals from New Zealand have been too sporadic to have much influence on the march of [New Zealand] law".[66] This observation is borne out in citation rates in the Court of Appeal.

C Other English Courts

Deferential citations to the decisions of English courts (other than the Privy Council) accounted for just 23.5 per cent of total citations. Consistent with the different persuasive value placed of the decisions of each of the courts, the House of Lords received the most citations, followed by the English Court of Appeal and then the lower English courts. The overall citation rate to English Courts is slightly higher than in courts in Australia and Canada. Previous studies suggest that English authorities account for about 12 per cent of total citations in the provincial courts in Canada while in the Supreme Court of Canada the figure is about 15 per cent.[67] Excluding decisions of the Privy Council, English cases accounted for 12.7 per cent of citations in the High Court of Australia in 1996 (see Table 2) and just under 20 per cent of citations in the state courts of Australia over the period 1996-1999.[68] One finding, replicated in previous studies for courts in Australia and Canada, is that the House of Lords, English Court of Appeal and lower English courts were all cited more than the Privy Council. At first glance,

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65 "Judicial Citation" above n 6.

66 "The New Zealand National Legal Identity" above n 25, 181.

67 "Judicial Citation" above n 6; "Judicial Authority" above n 7; "The Evolution of Coordinate Precedential Citation" above n 7.

68 "What do Intermediate Appellate Courts Cite" above n 5.

this might seem surprising given that the Privy Council is in the same judicial hierarchy as the Court of Appeal, but this reflects the fact that there are less Privy Council decisions to cite than decisions of other English courts.

D Courts in Countries other than New Zealand and England

Courts in countries other than New Zealand or England accounted for 17.9 per cent of citations in the Court of Appeal. This is much higher than comparable figures for the High Court of Australia (5.4 per cent) and Supreme Court of Canada (4.9 per cent).[69] The comparable figures for courts in the United States are even lower. Studies have found that courts in the United States cite few foreign cases at all including Canadian and English authorities.[70] Table 3 breaks down citations to courts in countries other than New Zealand and England. Courts in Australia, Canada and the United States received the most citations in that order, accounting for almost 95 per cent of citations in table 3. Altogether there are eight different countries in table three. There are also citations to four international courts, with the most cited international court being the European Court of Human Rights.

What explains the high level of citations to courts in Australia, Canada and, to a lesser extent, the United States? In the case of Australia and, to a lesser degree Canada, important factors are similar historical background and the similar social context of litigation.[71] This is reflected in Lord Cooke's observation, quoted in part two, that the experiences of Australia and Canada are more relevant to New Zealand than those in England. There is supporting evidence in studies in the United States that have found that coordinate citations between state supreme courts depend on a range of socio-cultural factors including migration flows, geographical proximity and population size.[72] One reason for the high citation rate to Australian courts is that Australia is close geographically to New Zealand. Calderia found that supreme courts in adjacent states cited each other's cases more often holding other factors

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69 "Judicial Citation" above n 6.

70 See Manz, above n 10, 134; Friedman et al, above n 10, 799; "Toward a Theory of Citations" above n 10, 400.

71 For an early (and now somewhat dated) analysis of the use of Australian precedents in New Zealand courts see DL Mathieson "Australian Precedents in New Zealand Courts" (1963) 1 NZULR 77.

72 For example see "The Transmission of Legal Precedent" above n 2; Harris, above n 2;

constant. He reasoned that this was because the social context of litigation in neighbouring states was similar.[73]

Geographical proximity, though, is only a partial explanation. If citation rates could be explained solely on this basis, the High Court of Australia would cite the Court of Appeal equally as often as the Court of Appeal cites the High Court. Previous studies suggest that apart from Australian and English courts, Australian courts cite New Zealand courts more than courts in any other country.[74] However, citations to New Zealand courts make up, at most, one per cent of citations in the High Court of Australia. This suggests that at least in relation to the High Court of Australia, the Court of Appeal is a big "consumer" and a small "supplier" of coordinate citations. In explaining this, the relative population of Australia and New Zealand is relevant. Again, it is possible to argue via analogy with the studies for state courts in the United States. Friedman, Kagan, Cartwright and Wheeler suggest that states with large populations are cited more than states with small populations. For instance, the Supreme Court of California receives many more out-of-state citations than the Supreme Court of South Dakota in the United States. Friedman, Kagan, Cartwright and Wheeler explain this on the basis that the: [75]

> California Supreme Court decisions establish the law for an empire of over 20,000,000 people; for that reason alone, California decisions may be regarded as more significant than the decisions of the Supreme Court of South Dakota, a state with a population of about 4 per cent of California.

Some of the citations to decisions of courts in Canada and the United States are in cases concerning the New Zealand Bill of Rights Act 1990. Lord Cooke has publicly acknowledged the assistance that decisions of the Canadian courts in particular have provided in interpreting the Bill of Rights. Writing in 1995, he stated:[76]

> In the five years since the enactment of the New Zealand Bill of Rights Act 1990 we have tended to ransack the Canadian reports for their Charter jurisprudence, while drawing deeply also from the European and United States well.

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73 "The Transmission of Legal Precedent" above n 2, 182-183.

74 For example, see "What do Intermediate Appellate Courts Cite" above n 5.

75 Friedman et al, above n 10, 807.

76 Lord Cooke of Thorndon "The Dream of an International Common Law" in Cheryl Saunders (ed) *Courts of Final Jurisdiction – The Mason Court in Australia* (Federation Press, Sydney, 1996) 138, 142-143.

In these cases Charter decisions provide a stock of cases on which to draw while the Court of Appeal builds up its own precedents.

The High Court of Australia and Supreme Court of Canada were responsible for the majority of citations to Australian and Canadian courts respectively. However, there were also a number of diversity citations to state and provincial courts. An important determinant of diversity citations is the reputation of the cited court. The New South Wales Supreme Court made up the bulk of diversity citations to Australian courts while the Ontario Court of Appeal was the most cited of the Canadian provincial courts. This result is not surprising. McCormick found that the Ontario Court of Appeal was the most cited provincial court of appeal in Canada. He goes as far as to suggest: "To the extent that citation patterns imply doctrinal leadership, [it is appropriate] to think of the Ontario Court of Appeal as a "junior Supreme Court [of Canada]'".[77] In Australia the New South Wales Supreme Court is the most cited of the state courts and enjoys a similar status.[78] Both of these courts have reputations for judicial innovation which attract comment in other courts. The reputation of the judges is also relevant. A disproportionate number of High Court judges in Australia and Supreme Court judges in Canada have been members of the Supreme Court of New South Wales or the Ontario Court of Appeal.

E Secondary Authorities

In Table 4 secondary authorities are divided into "legal" and "non-legal" sources. Most citations to secondary authorities were to legal sources. This is similar to the High Court of Australia in 1960, 1970, 1980 and 1996 where at least 85 per cent of citations to secondary authorities were to legal sources in each of these years.[79] However, it contrasts with the United States Supreme Court, where almost 30 per cent of secondary source citations were to non-legal sources.[80] In the Court of Appeal, legal treatises were responsible for 47.8 per cent of total citations, legal periodicals accounted for 14.9 per cent of total citations, law reform reports for 9.5 per cent of total citations and legal encyclopaedias for seven per cent of total citations to secondary authorities. These findings replicate rankings for previous studies in Australian and Canadian courts, but differ from the United States Supreme Court which cites a higher

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77 "The Evolution of Coordinate Precedential Citation" above n 7, 291.

78 "What do Intermediate Appellate Courts Cite" above n 5.

79 "Other than Accepted Sources of Law" above n 3.

80 Daniels, above n 8.

proportion of legal periodicals than legal texts.[81] Dictionaries were the most cited non-legal secondary authority, which is the same as the High Court of Australia, Australian state supreme courts and the United States Supreme Court.[82]

Table 5 lists all legal treatises that received three or more citations. The six most cited texts were Todd *The Law of Torts in New Zealand,* Archbold *Criminal Pleading*, *Chitty on Contracts;* Burrows *Statute Law in New Zealand,* Dicey and Morris *Conflict of Laws;* and *McGechan on Procedure*. The Court of Appeal cites a mixture of modern commentators (such as Adams, Burrows, Finn and Lindgren) and classic commentators (such as Archbold, Blackstone, Chitty and Stephen). Merryman calls the former "local works". He states:[83]

> [local works] are often "convenience" or "baseline" citations. They are an expression of the view that on some questions legal development is cumulative, that progress up to a certain point can be drawn from the decisions, statutes and administrative practice and be accurately stated in summary form.

Are citations to "local works" a positive or negative phenomenon? Merryman suggests that the purist would argue that the baseline function could be served by citing the "controlling decision" or other "primary authority". However, at the same time, he acknowledges that often a text "is easier to cite and puts the state of the settled law in fuller, richer perspective".[84]

Table 6 lists all legal periodicals cited in the sample cases. A total of 40 different periodicals were cited 133 times. Thus, the number of legal periodicals cited per case was 0.4. This is lower than the High Court of Australia and United States Supreme Court. Over the period 1990 to 1997 the High Court of Australia cited 3.7 legal periodicals per case.[85] While there are no recent figures for the United States Supreme Court, in the 1978 term it cited 2.7 legal periodicals per case.[86] The five most cited periodicals in the Court of Appeal were the New

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81 "Other than Accepted Sources of Law" above n 3 (High Court of Australia); "What do Intermediate Appellate Courts Cite" above n 5 (Australian state supreme courts); Black and Richter, above n 6 (Supreme Court of Canada); Daniels, above n 8 (United States Supreme Court).

82 "Other than Accepted Sources of Law" above n 3; "What do Intermediate Appellate Courts Cite" above n 5; Daniels, above n 8.

83 "Toward a Theory of Citations" above n 10, 413.

84 "Toward a Theory of Citations" above n 10, 413.

85 "Academic Writing and the Courts" above n 3

86 Daniels, above n 8.

Zealand Universities Law Review, Public Law, Cambridge Law Journal, Law Quarterly Review and Yale Law Journal. Overall, a high proportion of the periodicals in Table 6 are published in Europe or North America, which suggests that the Court of Appeal is receptive to overseas academic opinion. However, the periodicals that the Court of Appeal cites the most are not the same as courts overseas. Of the ten most cited periodicals in the Court of Appeal, only one (Yale Law Journal) is among the ten most cited periodicals in the United States Supreme Court, while just three (Cambridge Law Journal, Law Quarterly Review and Yale Law Journal) are in the ten most cited periodicals in the High Court of Australia.[87]

VI CITATION PRACTICE OF INDIVIDUAL JUDGES

Table 7 gives statistics on reported judgments of individual judges for both the permanent members of the Court of Appeal and judges of the High Court, sitting in the Court of Appeal. Richardson P had the largest number of reported judgments (153), Thomas J is next with 132, while Henry J had the third highest number with 129. At the other end of the scale six judges (Anderson, Fisher, Fraser, Chilwell, Holland and Somers JJ) had one judgment each. A striking feature of Table 7 is the high proportion of joint judgments. Joint judgments are responsible for almost 90 per cent of total judgments. This is similar to the United States Supreme Court where there has been a long tradition of writing a single joint opinion. However, it differs from the High Court of Australia where multiple judgments, and therefore longer reasons for decision, are more common.[88]

The argument for a single joint judgment is that multiple opinions lessen the persuasive force of the judgment. Benjamin Cardozo writes in this regard:[89]

> Of the cases that come before the court in which I sit, a majority, I think, could not, with semblance of reason, be decided in anyway but one. The law and its application alike are plain. Such cases are predestined, so to speak, to affirmance without opinion [that is via memorandum opinion or single unanimous judgment].

The alternative view is that it is important to have multiple views on important questions of law. Former Chief Justice of the High Court of Australia, Sir Harry Gibbs has championed the

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87 Information on the High Court of Australia is from "Academic Writing and the Courts" above n 3. Information on the United States Supreme Court is from Sirico and Drew, above n 8.

88 See Graeme Orr "Verbosity and Richness: Current Trends in the Craft of the High Court" (1998) 6 Torts Law Journal 291.

89 Benjamin Cardozo *The Nature of the Judicial Process* (1921) 164 cited in Friedman et al, above n 10, 777.

second perspective. He suggests that "it is not wise to have only one judgment in an appellate court dealing with an important question of law". One reason for this "is that sometimes a joint judgment may lead to compromise, or to the omission of something that might have been useful to state, but that does not command universal agreement".[90] Whatever the merits of these opposing views, from a practical perspective one significant reason that there are more joint judgments in the Court of Appeal than the High Court of Australia could be the different decision-making processes in the two courts. When judgment is reserved, the Court of Appeal follows a conference process where the judges agree that one or more will prepare a draft judgment for circulation. The collegiate atmosphere this inspires tends to encourage consensus. The High Court of Australia does not follow this practice.[91]

Table 8 presents details on the citation practice of each judge. Fisher J had the largest number of citations per judgment (43 in one judgment), while Williams J had the least (2.3 citations per judgment in three judgments). However, it is dangerous to draw any conclusions at all on such a small number of reported judgments. Where a judge has only a few reported judgments the citation rate is particularly susceptible to various abnormalities like the type of case and how many authorities were cited in argument. Hence, it is safer if we just look at judges with at least 15 judgments in the sample cases. This is an arbitrarily chosen amount, but it ensures that to some extent the citation practice of a judge in the reported cases is representative of their citation practice in general. This excludes most of the High Court judges who sat in Court of Appeal cases, but, with the exception of Hardie Boys J, who sat in just seven of the sample cases, it is inclusive of all of the permanent members of the Court of Appeal listed in Table 8. Taking 15 judgments per year as a minimum benchmark, three judges had, on average, more than ten citations per judgment. On a per judgment basis, Keith J cited the most authorities (11.2), Thomas J was next (11.0) and Gault J was third (10.2). On a per judgment basis Cooke P and Doogue J cited the least authorities (7.4). These figures, at least to some extent, reflect the length of each judge's judgments. A different indicator of citation practice is citations per page. On a citation per page basis Heron J cited the most authorities (1.4), while Tipping J (1.0) and Blanchard J (0.9) cited the least.

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90 Sir Harry Gibbs "Judgment Writing" (1993) 67 Australian Law Journal 494, 501-502.

91 On the practice in the Court of Appeal see Richardson, above n 1, 3-4. On the practice in the High Court of Australia see Michael Kirby "What is it Really Like to be a Justice of the High Court of Australia?" (1997) 19 Sydney LR 514, 517.

Table 8 provides an indication of the different sorts of authorities that individual judges cited. In his study of citation practice in the California Supreme Court, Merryman speculated that one possible reason for differences in citation rates is that the most frugal citers refer to just the most relevant authorities while more generous citers include "references to works of dubious authority".[92] Merryman, however, found that this was not true for his sample. Instead, the judges who cited the most overall were also the biggest citers of the California Supreme Court and the United States Supreme Court, which he used as rough proxies for the most relevant authorities. The results here are similar to Merryman's findings. As indicated above, on a per judgment basis, Keith, Thomas and Gault JJ cited the most authorities. These judges also cited the most decisions of the Court of Appeal – Keith J cited the Court of Appeal 480 times, Thomas J cited the Court of Appeal 489 times and Gault J cited the Court of Appeal on 430 occasions. Each judge was also in the top five in terms of citations to the Privy Council. However, it should be noted that, at the same time, Thomas and Keith JJ also cited the most secondary authorities. Thomas J cited the most secondary authorities of any member of the Court in both absolute terms and on a per judgment basis. Keith J cited the third highest number of secondary authorities in absolute terms and the equal second highest, tied with Eichelbaum CJ, when measured on a per judgment basis.

Two factors could help to explain the fact that Thomas and Keith JJ cite substantial amounts of secondary authorities. The first is the academic predisposition of both judges. A previous study of secondary source citations in the Federal Court of Australia gives some support for the proposition that judges with academic backgrounds cite more secondary authorities.[93] In that study Finn J, who was an academic before joining the Federal Court, cited the most secondary authority. Keith J also has an academic background. In some sense Thomas J might be seen as the Court of Appeal equivalent of Kirby J of the High Court of Australia. Previous studies for the High Court of Australia have found that Kirby J cites more secondary authorities than any other Justice.[94] He is also a prolific contributor to legal periodicals. While Thomas J does not write nearly as many legal articles as Kirby J, he has shown that he is more

92 "Toward a Theory of Citations" above n 10, 422.

93 "The Authority of Secondary Authority" above n 4.

94 "Other than Accepted Sources of Law" above n 3; "Academic Writing and the Courts" above n 3.

than willing to express his views in academic forums and enter into exchange with academic critics; at the least this preparedness demonstrates his proclivity for academic debate.[95]

A second factor is that Thomas J delivers a high proportion of dissenting judgments. Thomas J was responsible for 44 per cent of the dissenting judgments in the sample and 11.4 per cent of Thomas J's judgments were in dissent compared with 3.1 per cent for the Court as a whole. Some studies in the United States have suggested that dissenting judgments are more likely to cite secondary authorities than majority judgments because dissenting judgments reflect novel legal doctrine and therefore are more likely to draw on non-traditional sources.[96] Previous findings for the High Court of Australia are consistent with this view.[97] This suggestion also helps to explain the citation practice of Thomas J.

VII CONCLUSION

This article has considered citation practice in a sample of 300 Court of Appeal cases. It has discussed the rationale for citing authorities and academic and judicial views on the issue. It has documented and discussed citations to both case law and secondary authorities and reviewed the citation practice of individual judges, which offers some insights into different judicial styles. Whenever possible the study has drawn comparisons with the results of previous studies. The results suggest some similarities between the citation practice of the Court of Appeal and courts in Australia and North America, such as the fact it cites its own cases more than those of other courts and prefers its more recent decisions. At the same time, the results point to some important differences. One of the main differences is that the Court of Appeal cites more decisions from foreign countries (excluding England) than courts in Australia and North America.

This study has some limitations. First, the results of counting citations need to be put into perspective. The fact that a judge cites many authorities need not necessarily imply he/she has done more research and does not cast light on who is and is not a "good" judge. This is particularly so in the case of judgments that use "string citations", which have been criticised as

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95 For a recent example see Edmund Thomas "Fairness and Certainty in Adjudication: Formalism vs Substantialism" (1999) 9 Otago LR 459; James Allan "The Invisible Hand in Justice Thomas' Philosophy of Law" [1999] NZLR 213; Edmund Thomas "The 'Invisible' Hand Prompts a Response" [1999] NZLR 227.

96 See Bernstein, above n 8; Daniels, above n 8; Mann, above n 10.

97 "Other than Accepted Sources of Law" above n 3.

being indicative of bad legal writing.[98] In this respect citation to long lists of authorities does not necessarily make the judgment better. In fact, as indicated earlier, there is a strong line of thought that argues that shorter judgments, and therefore fewer citations to authorities, are preferable. As Cane puts it, somewhat bluntly: "Judgments are not, and should not be, law review articles".[99] A second limitation is that the study is restricted to a sample of published decisions. For this reason it should be taken as giving an indication of citation practice rather than being authoritative. Third, it is impossible to be certain whether the cases in the sample are representative, although, at the same time there is no reason to believe they are not and, as indicated above, the sample size is similar to previous studies. Thus, while the results should be viewed with caution, the findings should be of value to a range of people including libraries, barristers appearing in the Court of Appeal and academics interested in judicial citation practice

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98 See Smith, above n 29.

99 Cane, above n 35.

TABLE 1

Citation According to Authority Type in Reported Decisions of the Court of Appeal

Cited Court	Number of Citations	Percentage of Citations
NZCA pre 1920 [a]	59	(0.56)
1920-29	17	(0.16)
1930-39	15	(0.14)
1940-49	19	(0.18)
1950-59	34	(0.32)
1960-69	101	(0.96)
1970-79	195	(1.86)
1980-89	939	(8.95)
1990-99	2,088	(19.90)
NZCA Total	3,467	(33.05)
NZ High Court [b]	1,291	(12.31)
Other NZ Courts	122	(1.16)
NZ Total	4,880	(46.52)
Privy Council	378	(3.60)
House of Lords	856	(8.16)
Court of Appeal (Eng)	815	(7.77)
Lower English Courts	790	(7.53)
English Total	2,839	(27.06)

Table 1 continued

Cited Court	Number of Citations	Percentage of Citations
Other Countries' Courts	1878	(17.90)
Secondary Authorities	893	(8.51)
TOTAL	10,490	(100.0)

Notes

a Includes citations before the Court of Appeal was reconstituted as a separate court in 1957.

b Before 1 April 1980 citations are to the Supreme Court.

TABLE 2

Citations According to Authority Type in the High Court of Australia

in Reported Decisions 1920, 1940, 1960, 1980, 1996

Cited Court	1920		1940		1960		1980		1996	
High Court	452	(24.0)[a]	192	(13.4)	841	(33.0)	1,227	(44.6)	4,095	(47.4)
Federal/Family Courts	_	_	_	_	_	_	16	(0.6)	612	(7.1)
State/Territ. Supreme Courts	72	(3.8)	93	(6.6)	341	(13.4)	269	(9.8)	1,038	(12.0)
Total Australian Courts	524	(27.8)	285	(20.0)	1,182	(46.4)	1,512	(54.9)	5,745	(66.5)
House of Lords	324	(17.2)	135	(9.5)	225	(8.8)	330	(12.0)	422	(4.9)
Privy Council	254	(13.5)	81	(5.7)	157	(6.2)	98	(3.6)	194	(2.2)
Court of Appeal (Eng)	187	(9.9)	349	(24.4)	197	(7.7)	232	(8.4)	504	(5.8)
Lower English Courts	436	(23.1)	377	(26.4)	462	(18.1)	228	(8.3)	402	(4.7)
Total English Courts	1,201	(63.7)	942	(66.0)	1,041	(40.8)	888	(32.3)	1,522	(17.6)
Courts in Other Countries	89	(4.7)	66	(4.6)	69	(2.7)	159	(5.8)	470	(5.4)
Secondary Authorities	72	(3.8)	129	(9.0)	255	(10.1)	1.93	(7.0)	904	(10.5)
Other	_	_	6	(0.4)	_	_	_	_	_	_
TOTAL	1,886	(100.0)	1,428	(100.0)	2,547	(100.0)	2,752	(100.0)	8,641	(100.0)

Source: Russell Smyth "Citations by Court" in Tony Blackshield, Michael Coper and George Williams (eds) *The Oxford Companion to the High Court of Australia* (Oxford University Press, Melbourne, forthcoming).

Note

a Figures in brackets are percentages.

TABLE 3

Citation to Countries in Courts other than New Zealand and England in Reported Decisions of the Court of Appeal

Country	**Citations**	**Percentage**
Australia	864	(46.00)
Canada	588	(31.31)
United States	316	(16.83)
Scotland	17	(0.91)
Ireland	7	(0.37)
South Africa	3	(0.16)
India	2	(0.11)
Western Samoa	1	(0.05)
International Courts		
European Court of Human Rights	47	(2.50)
Human Rights Commission	27	(1.44)
Commission of the European Community	3	(0.16)
International Court of Justice	3	(0.16)
TOTAL	1,878	(100.0)

TABLE 4

Citation to Secondary Authorities

in Reported Decisions of the Court of Appeal

Legal	**Citations**	**Percentage**
Treatises	427	(47.82)
Periodicals	133	(14.89)
Encyclopaedias	63	(7.05)
Dictionaries	19	(2.13)
Law Reform Reports	85	(9.52)
American Restatement	4	(0.45)
Other [a]	14	(1.57)
Sub-total	745	(83.43)
Non-legal		
Treatises	43	(4.82)
Periodicals	8	(0.90)
Dictionaries	97	(10.86)
Sub-total	148	(16.57)
TOTAL	893	(100.00)

Note

a Includes unpublished manuscripts, conference papers and discussion papers.

TABLE 5

Citation to Legal Treatises

in Reported Decisions of the Court of Appeal

Treatise	Citations
Todd (ed) *The Law of Torts in New Zealand*	23
Archbold *Criminal Pleading, Evidence and Practice*	16
Chitty on Contracts	15
Burrows *Statute Law in New Zealand*	12
Dicey and Morris *Conflict of Laws*	12
McGechan on Procedure	12
Gatley on Libel and Slander	10
Adams *Criminal Law and Practice in New Zealand*	9
Rishworth and Huscroft (ed) *Rights and Freedoms*	8
Stephen *A History of the Criminal Law of England*	8
Russell on Crime	8
Trapiski *Family Law*	8
Blackstone *Commentaries on the Laws of England*	7
Callard and Pallot *Business Valuation Practice*	7
de Smith, Woolf & Jowell *Judicial Review of Administrative Action*	6
Fleming *The Law of Torts*	6
Kneeper & Bailey *Liability of Corporate Officers and Directors*	6
Spencer-Bower and Turner *The Law Relating to Estoppel by Representation*	6

Table 5 continued

Treatise	Citations
Lindley and Banks on Partnership	5
Campbell *Compensation for Personal Injury in New Zealand*	5
Chasters *The Law Relating to Public Officers*	5
Dal Pont *Lawyers Professional Responsibility in Australia and New Zealand*	5
Dicey *Introduction to the Study of the Law of the Constitution*	5
Gale on Easements	5
Gower *Principles of Company Law*	5
Lindgren *Time in the Performance of Contracts*	5
MacFarlane and Fisher *Churches, Clergy and the Law*	5
McNicol on Privilege	5
Nowak *UN Covenant on Civil and Political Rights*	5
Picarda *The Law and Practice Relating to Charities*	5
Gunn's Commonwealth Income Taxation and Practice	4
Hinde, McMorland and Sim *Introduction to Land Law*	4
Spencer, Bower & Turner *The Doctrine of Res Judicatae*	4
Wade and Forsyth *Administrative Law*	4
Youdan (ed) *Equity, Fiduciaries and Trust*	4
Beatson & Friedman (ed) *Good Faith and Fault in Contract Law*	3
Cairns *Australian Civil Procedure*	3
Campbell *The Law of Adoption in New Zealand*	3
Clerk and Lindsell on Torts	3

Table 5 continued

Treatise	Citations
Copinger and Skone James on Copyright	3
Cross on Evidence	3
Finn (ed) *Essays on Restitution*	3
Finn *Fiduciary Obligations*	3
Goode *Payment Obligations in Commercial and Financial Transactions*	3
Griffith *New Zealand Adoption – History and Practice, Social and Legal*	3
Gtahl-Madsen *The Standard of Refugees in International Law*	3
Hathaway *The Law of Refugee Status*	3
Hogg *Constitutional Law in Canada*	3
Ivamy *General Principles of Insurance Law*	3
Jacobs (ed) *Supreme Court Practice*	3
Jeffries *Urban Valuation in New Zealand*	3
Kerly's Law of Trademarks and Trade Names	3
McGregor on Damages	3
McInnes (ed) *Restitution Developments in Unjust Enrichment*	3
Meagher, Gummow and Lehane *Equity, Doctrine and Remedies*	3
Mustill & Boyd *The Law and Practice of Commercial Arbitration in England*	3
Prosser and Keeton *The Law of Torts*	3
Richardson *Religion and the Law*	3
Wills on Circumstantial Evidence	3

TABLE 6

Citation to Legal Periodicals

in Reported Decisions of the Court of Appeal

Periodical	Citations
NZULR	18
Public Law	11
CLJ	10
LQR	9
Yale LJ	9
NZLJ	8
MLR	7
Minn LR	6
VUWLR	6
CLP	5
U Toronto LJ	5
ICLQ	4
Otago LR	3
Oxford JLS	3
ALJ	2
Harv L Rev	2
Mich L Rev	2
Asian Yearbook International Law	1
Behav Sci & L	1

Table 6 continued

Periodical	Citations
Berk Women's Law Jnl	1
Bond LR	1
CNLR	1
Crim LR	1
Crim LQ	1
EIPR	1
Harv Women's Law Jnl	1
Human Rights Qtrly	1
ILJ	1
JBL	1
JIBL	1
Jnl Law & Soc	1
Law Teacher	1
Osgoode Hall LJ	1
Ottawa L Rev	1
Rutgers LJ	1
Santa Clara LR	1
U Tas LR	1
U T Fac L Rev	1
Va L Rev	1
Wm & Mary L Rev	1

TABLE 7

Judgments in Reported Decisions of the Court of Appeal

	JUDGMENTS					
	JOINT	SINGLE	CONCURRING	DISSENTING	TOTAL[a]	
Judges of the Court of Appeal						
Eichelbaum CJ	39	2	-	-	41	(298)
Cooke P	12	4	1	1	18	(107)
Richardson P	144	4	1	4	153	(1,336)
Hardie Boys	6	1	-	-	7	(64)
Gault	106	4	3	4	117	(1,053)
McKay	37	7	-	-	44	(340)
Henry	118	7	-	4	129	(1,120)
Thomas	95	20	2	15	132	(1,293)
Keith	113	3	1	1	118	(1,128)
Blanchard	108	8	-	1	117	(1,130)
Tipping	66	16	-	1	83	(651)
Judges of the High Court						
Barker	3	-	-	1	4	(52)
Thorp	4	-	-	-	4	(20)
Tompkins	7	-	-	-	7	(35)
Gallen	12	-	-	-	12	(85)
Heron	19	-	-	-	19	(120)
Smellie	2	-	-	1	3	(27)

Table 7 continued

	JUDGMENTS					
	JOINT	SINGLE	CONCURRING	DISSENTING	TOTAL[a]	
Judges of the High Court						
Doogue	17	-	-	-	17	(98)
Anderson	1	-	-	-	1	(7)
Robertson	7	-	-	-	7	(38)
Fisher	1	-	-	-	1	(14)
Fraser	1	-	-	-	1	(7)
Neazor	4	-	-	1	5	(27)
Penlington	2	1	-	-	3	(18)
Temm	8		-	-	8	(38)
Hammond	4	-	-	-	4	(31)
Cartwright	3	-	-	-	3	(25)
Williams	3	-	-	-	3	(23)
Goddard	8	-	-	-	8	(41)
Salmon	7	1	1	-	9	(51)
Casey	4	-	-	-	4	(21)
Chilwell	1	-	-	-	1	(5)
Holland	1	-	-	-	1	(8)
Somers	1	-	-	-	1	(5)
TOTAL	979	81	9	34	1,103	(9,447)

Note

a Figures in brackets are page numbers.

TABLE 8

Citation Practice of Individual Judges

in Reported Decisions of the Court of Appeal

Table 8 a

Cited Court	Eichelbaum	Cooke	Richardson	Hardie Boys	Gault	McKay
NZCA pre 1920	1	1	9		8	3
1920-29			3		3	
1930-39	1		3		1	1
1940-49	1		4		1	
1950-59	2		5		1	1
1960-69	6	1	12		10	2
1970-79	15	3	29	2	19	11
1980-89	54	21	66	5	113	48
1990-99	85	30	260	14	274	65
TOTAL	165	56	391	21	430	131
NZ High Court	34	20	188	8	127	56
Other NZ Courts			18		20	7
Privy Council	10	1	60	1	45	15
House of Lords	16	16	127	3	82	51
Court of Appeal (Eng)	23	10	115	7	85	40

Table 8 a continued

Cited Court	Eichelbaum	Cooke	Richardson	Hardie Boys	Gault	McKay
Lower English Courts	22	8	124	9	90	27
Other Countries' Courts	75	17	324	41	232	39
Secondary Authorities	36	6	115	6	84	19
TOTAL	381	134	1462	96	1195	385
Cites per Judgment	9.3	7.4	9.6	13.7	10.2	8.8
Cites per Page	1.3	1.3	1.1	1.5	1.1	1.2

Table 8 b

Cited Court	Doogue	Anderson	Roberson	Fisher	Fraser	Neazor
NZCA pre 1920	1			2		
1920-29						
1930-39			1			
1940-49			1			
1950-59	1					
1960-69	3					
1970-79	1		1			1
1980-89	13		6	1		

Table 8 b continued

Cited Court	Doogue	Anderson	Roberson	Fisher	Fraser	Neazor
1990-99	21	4	19		3	3
TOTAL	40	4	28	3	3	4
NZ High Court	21		15	3		7
Other NZ Courts	2					
Privy Council	2					1
House of Lords	9		1	2		5
Court of Appeal (Eng)	18		2	2		6
Lower English Courts	11		1	13		2
Other Countries' Courts	13	1	10	14	3	8
Secondary Authorities	9		3	6		8
TOTAL	125	5	60	43	6	41
Cites per Judgment	7.4	5	8.6	43	6	8.2
Cites per Page	1.3	0.7	1.6	3.1	0.9	1.5

Table 8 c

Cited Court	Henry	Thomas	Keith	Blanchard	Tipping	Barker
NZCA pre 1920	5	11	4	5	5	
1920-29	4	2	4		1	
1930-39	3			1	1	
1940-49	2	2	2	1	3	
1950-59	5	3	8	3	2	
1960-69	16	11	13	12	8	
1970-79	21	21	25	23	3	2
1980-89	90	156	130	102	54	9
1990-99	216	283	294	215	133	3
TOTAL	362	489	480	362	210	14
NZ High Court	153	175	131	136	78	20
Other NZ Courts	15	11	14	12	13	
Privy Council	54	46	58	43	26	2
House of Lords	103	118	101	94	65	2
Court of Appeal (Eng.)	109	67	104	83	47	4
Lower English Courts	90	97	87	69	60	4

Table 8 c continued

Cited Court	Henry	Thomas	Keith	Blanchard	Tipping	Barker
Other Countries' Courts	226	242	233	184	86	11
Secondary Authorities	97	209	102	79	53	5
TOTAL	1,209	1,454	1,310	1,062	638	62
Cites per Judgment	9.4	11.0	11.2	9.1	7.7	15.5
Cites per Page	1.1	1.1	1.2	0.9	1.0	1.2

Table 8 d

Cited Court	Penlington	Temm	Hammond	Cartwright	Williams	Goddard
NZCA pre 1920						
1920-29						
1930-39		3				
1940-49		2				
1950-59		1				
1960-69						1
1970-79		3		2		3
1980-89	1	2	3	2	1	5
1990-99	3	5	6	2		12

Table 8 d continued

Cited Court	Penlington	Temm	Hammond	Cartwright	Williams	Goddard
TOTAL	4	16	9	6	1	21
NZ High Court	3	8	5	5	4	4
Other NZ Courts		3				
Privy Council			1		1	2
House of Lords	2	4	4	5		2
Court of Appeal (Eng)	3	3	3	6		9
Lower English Courts	2	2		2	1	
Other Countries' Courts	1	4	3	1		8
Secondary Authorities	3	4	1	3		1
TOTAL	18	44	26	28	7	47
Cites per Judgment	6.0	5.5	6.5	9.3	2.3	5.9
Cites per Page	1.0	1.2	0.8	1.1	0.3	1.1

Table 8 e

Cited Court	Thorp	Thompkins	Gallen	Heron	Smellie	McGechan
NZCA pre 1920			2	1		1
1920-29						
1930-39						
1940-49						
1950-59				2		
1960-69				3		2
1970-79				5	2	1
1980-89	1	7	4	25	3	10
1990-99	9	28	20	42	7	14
TOTAL	10	35	26	78	12	28
NZ High Court	1	9	19	13	9	26
Other NZ Courts		2	2	2		
Privy Council				5	1	2
House of Lords	1		12	7		12
Court of Appeal (Eng.)		1	20	17		23
Lower English Courts		1	16	14	1	18

Table 8 e continued

Cited Court	Thorp	Thompkins	Gallen	Heron	Smellie	McGechan
Other Countries' Courts	19	2	20	26	2	23
Secondary Authorities		1	14	9	4	11
TOTAL	31	51	129	171	29	143
Cites per Judgment	7.8	7.3	10.8	9.0	9.7	7.9
Cites per Page	1.6	1.5	1.5	1.4	1.1	1.1

Table 8 f

Cited Court	Salmon	Casey	Chilwell	Holland	Somers	**TOTAL**
NZCA pre 1920						59
1920-29						17
1930-39						15
1940-49						19
1950-59						34
1960-69	1					101
1970-79	2					195
1980-89	3	2		2		939
1990-99	13	5				2,088

Table 8 f continued

Cited Court	Salmon	Casey	Chilwell	Holland	Somers	**TOTAL**
TOTAL	19	7		2		3,467
NZ High Court	3	5	2	1	2	1,291
Other NZ Courts	1					122
Privy Council	2					378
House of Lords	7	3	1		1	856
Court of Appeal (Eng)	7	1				815
Lower English Courts	5	6	4		4	790
Other Countries' Courts	4	3	1	1	1	1,878
Secondary Authorities	4			1		893
TOTAL	52	25	8	5	8	10,490
Cites per Judgment	5.8	6.3	8.0	5.0	8.0	9.5
Cites per Page	1.0	1.2	1.6	0.6	1.6	1.1