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Canadian Maritime Law Case Review

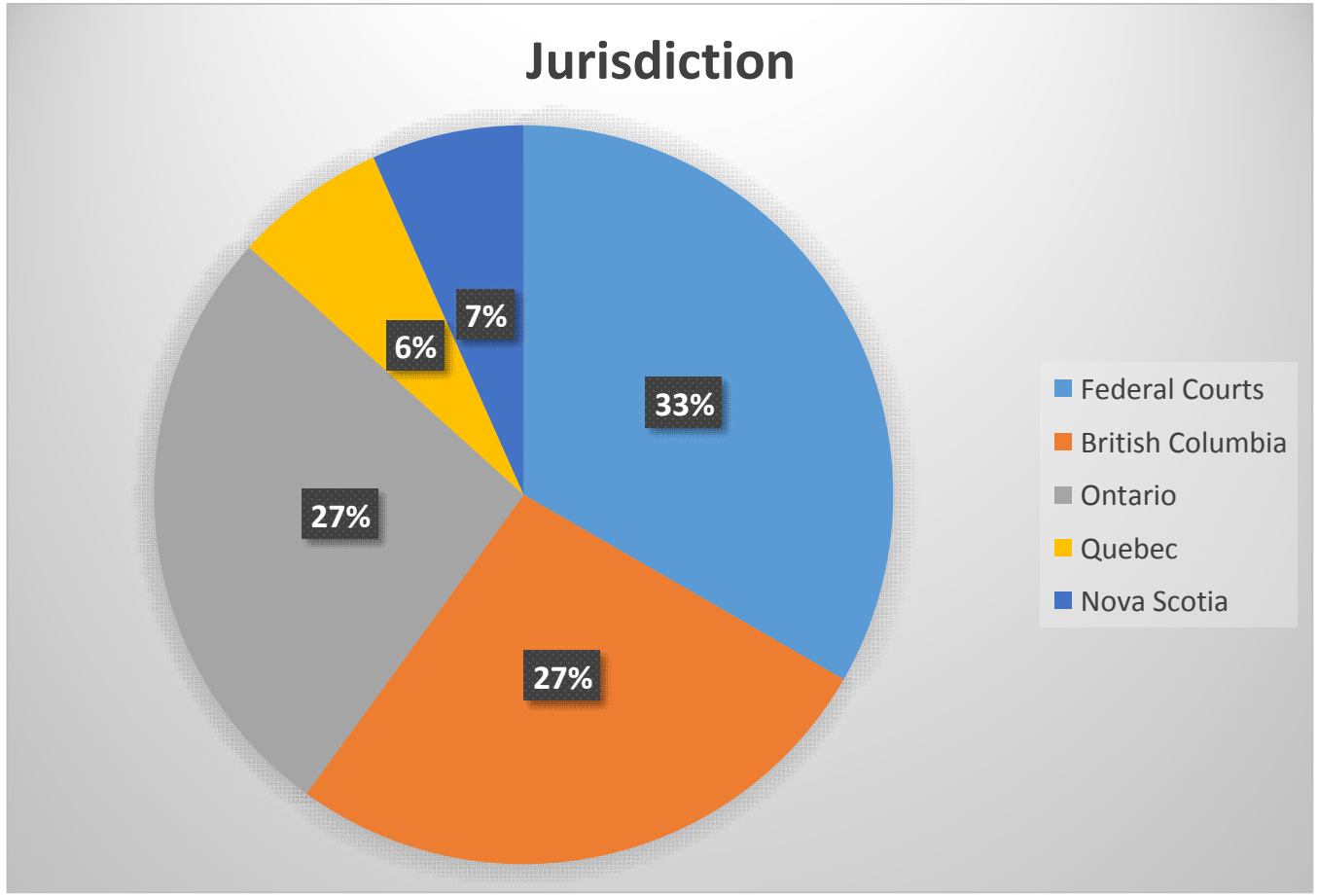
2020-2021

Marc D. Isaacs

June 1, 2020 to May 31, 2021

15 Cases in total

- 5 Federal Court
- 4 British Columbia
- 4 Ontario
- 1 Quebec
- 1 Nova Scotia



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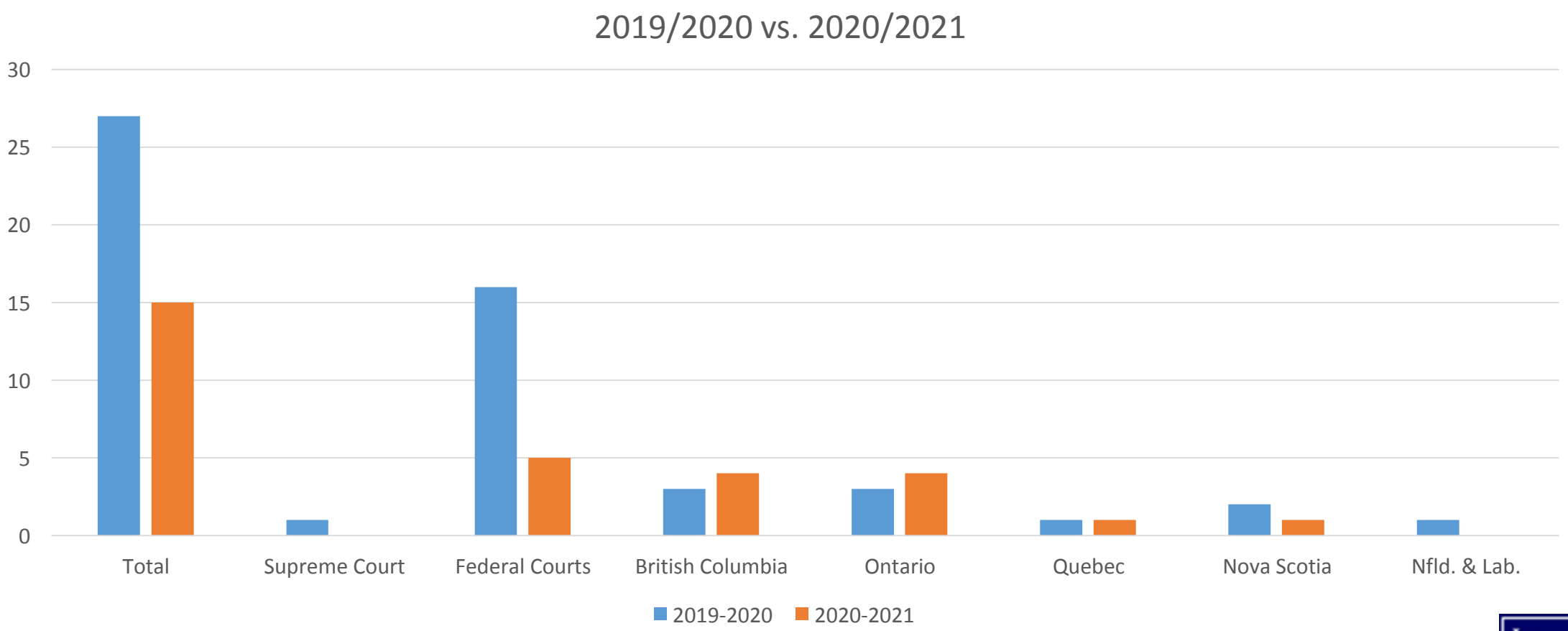
Year over Year Jurisdiction Comparison



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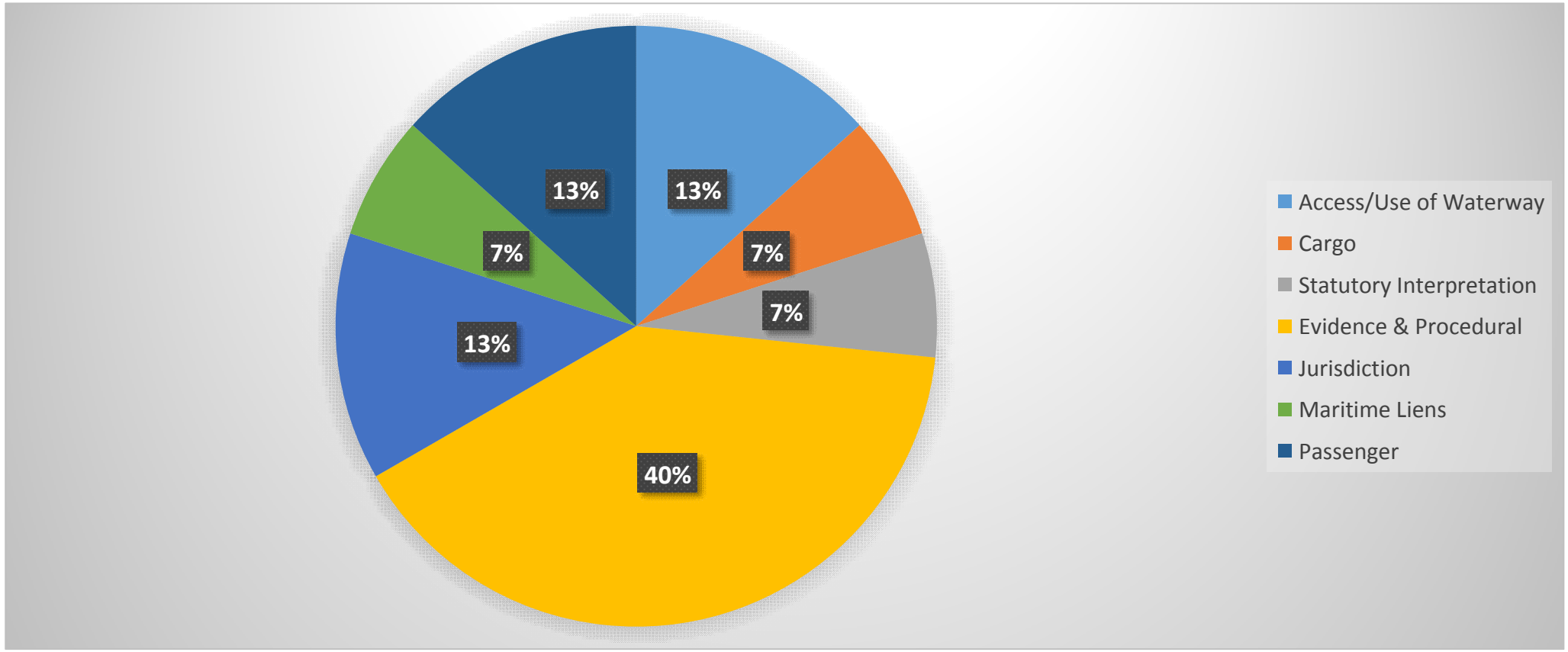
Breakdown by Issue



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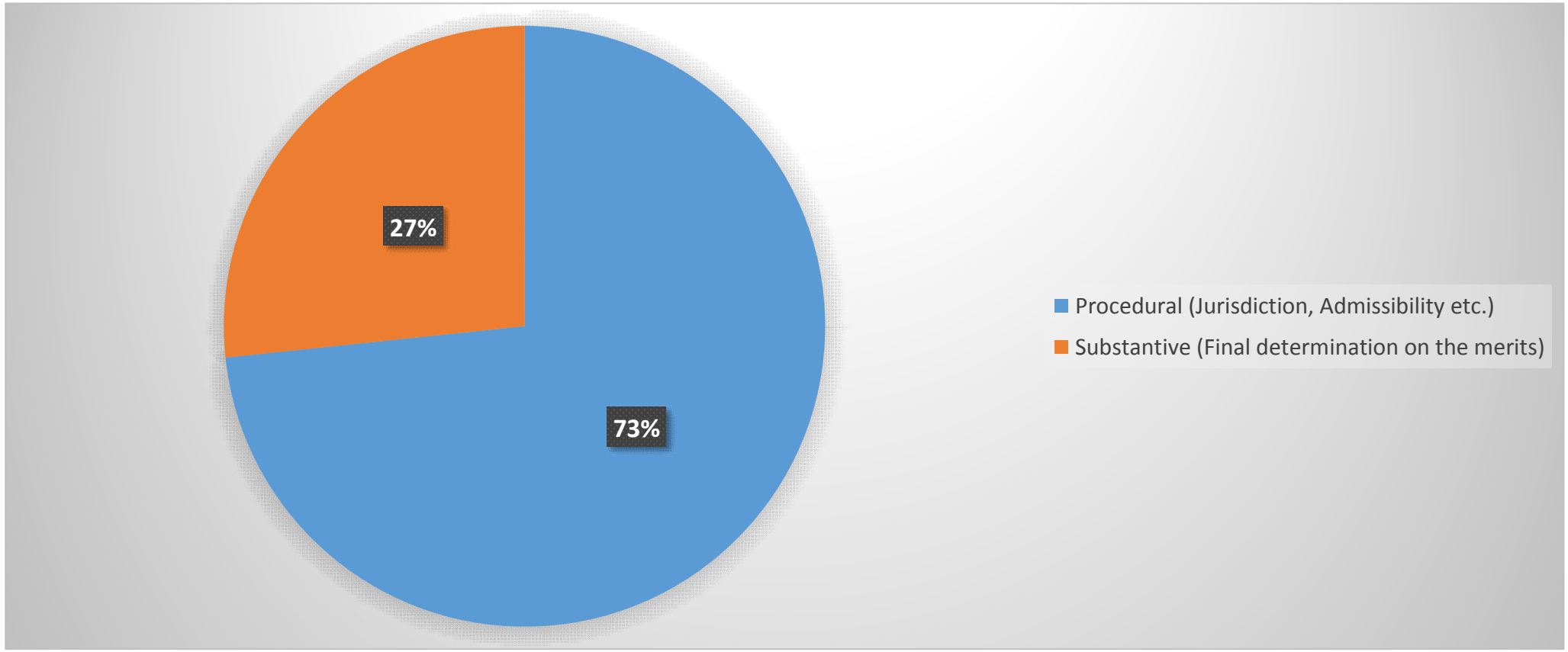
Procedural vs. Substantive Determinations



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The cases that I consider the most important or interesting

1. *Knight v. Black*

   Athens Convention applies to carriage on small non-commercial vessel when used for commercial purpose

2. *Great White Fleet v. Arc-en-ciel*

   Application of MLA s. 46 and the *forum non conveniens* should be determined in advance of trial

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Access to Waterway

Markowski v. Verhey,

2020 ONCA 472

Ontario Court of Appeal, July 22, 2020

Waterfront property - Launching of boats - Right of way.

Précis: A right of way granting access to a lake's beach waterfront "for the usual purposes" did not include the right to use motor vehicles to launch boats into the water

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Markowski v. Verhey

Facts: The appellant owned a cottage near a lake in Ontario, Canada. The property did not have a direct waterfront access. However, title to the property included a right of way "for all the usual purposes in, over, along and upon" the adjacent waterfront property to gain beach access. The appellant sought to bring boats to and from the shore by using a motor vehicle across the right of way. The adjacent land owner objected on the basis that the right of way only permitted access to the beach for beach activities, swimming and small craft which could be carried by hand, but not motor vehicles.

Held: The application judge held that the usual purposes included recreational activities such as swimming and beach activity, but not motor vehicles for the launching of boats. There was uncontradicted evidence before the application judge, on which he was entitled to rely, that there were restrictions on the right of way to bring motor vehicles across the property at the time that the right of way was granted. The application judge did not err in his interpretation of the right of way that restricted motor vehicles.

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Cargo

Great White Fleet v. Arc-En-Ciel Produce Inc., 2021 FCA 70

Federal Court of Appeal, April 13, 2021

Cargo – Stay of proceedings – jurisdiction clauses

Précis: The Trial Court should determine the applicability of forum selection clauses prior to trial.

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Great White Fleet v. Arc-En-Ciel Produce Inc.

Facts: This was an appeal from the decision of the Federal Court, which dismissed the defendant carrier's motion for an order staying the action in favour of proceedings to be instituted in the United States. The plaintiff was the owner of cargo shipped from Costa Rica to Ontario, Canada. The bill of lading between the defendant, Great White Fleet and the plaintiff contained a forum selection clause specifying disputes to be determined in the United States District Court for the Southern District of New York. The carrier brought a motion to stay the action on the basis of the forum selection clause. In response, the plaintiff contended that Section 46 of the *Marine Liability Act* rendered the forum selection clause ineffective. The defendant argued that the contract was not a "contract for the carriage of goods by water" within the meaning of Section 46 and therefore did not apply. The Federal Court found that the contract was a contract for the carriage of goods by water but also held that it was premature to make this finding and that the question as to whether Section 46 applied was best left to the Trial Judge. The Federal Court went on to consider the alternate ground and determined that there was strong cause as to why the forum selection clause should not be enforced.

Held: Section 46 of the *Marine Liability Act* determines the test the Court must apply on a stay motion. If s. 46 is applicable, the *forum non conveniens* test applies. If not, then the "strong cause" test applies. A plaintiff who is entitled to the benefit of s.46 should not also have to meet the burden of establishing a "strong cause". It is an error of law to decline to determine the application of s.46 and refuse to grant a stay. The question of the application of s.46 should be settled prior to trial and leaving the question to the trial judge defeats one of the purposes of s.46, which is to bring certainty to questions of jurisdiction. The parties should not spend the time and effort proceeding to trial in the Federal Court, only for it to be determined that the Federal Court should not hear the matter based on jurisdictional issues.

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Coasting Trade

Geophysical Services Incorporated v. Canada, 2021 NSSC 77

Nova Scotia Supreme Court, March 1, 2021

Coasting Trade Act – Summary Judgment

Précis: Several claims against the Government and another defendant corporation

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Geophysical Services Incorporated v. Canada

Facts: The Federal Government issued a public request for proposals to conduct seismic mapping research off the coast of Labrador in order to delineate the limits of Canada's continental shelf as a part of the United National Convention on the Law of the Sea project. Two proposals were received, both of which were going to employ the use of foreign flagged vessels. The plaintiff, who later learned about the award to the foreign flagged vessels, and was the owner of a Canadian flagged vessel, brought an action alleging various causes of action, such as unlawful interference with economic relations, misfeasance in public office, conspiracy, interference with contractual relations, negligent infliction of economic loss and unjust enrichment against the Federal Government and the successful bidder. The basis of the claim as that the use of a foreign flagged vessel was in violation of the *Coasting Trade Act*. The *Coasting Trade Act* prohibits the use of foreign flagged vessels in Canadian waters under certain circumstances, but excludes ocean research activity commissioned by the Department of Fisheries and Oceans and only applies to Canadian waters, not international waters outside of Canada.

Decision: The majority of the plaintiff's claims were dismissed on summary judgment.

Held: Where a proposed activity meets the definition of the coasting trade under the *Coasting Trade Act*, and the activity is proposed to be accomplished by a non Canadian flagged ship, that ship must seek a license from Transport Canada. The *Coasting Trade Act* does not prohibit a foreign ship from coasting trade work, it merely provides a process for doing so. The CTA does not impose any obligations on the tendering process. It does not grant a right of first refusal to Canadian flagged ship owners nor does it grant the right to such entities to be advised in advance of any tendering process which might be captured by the CTA. The CTA does not impose obligations upon contracting parties to determine, at any moment in time, the identity of any and all Canadian flagged ship owners nor the obligation of then providing those parties with some sort of advance notice of any process.

Many of the plaintiff's claims did not have the legal foundation and were dismissed. Two of the plaintiff's claims, misfeasance in public office and conspiracy had factual elements that had to be determined at trial.

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Criminal Law

R. v. Holmberg, 2020 ONCJ 481

Ontario Court of Justice, October 5, 2020

Criminal law - Duty to report accidents - *Canada Shipping Act* Regulations - Voluntariness of statements.

Précis: Statements made by an accused charged with impaired operation of a vessel were admitted into evidence at trial as the court was not satisfied that the statements were made as part of a regulatory requirement.

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R. v. Holmberg

Facts: The accused was charged with operation of a vessel while impaired by alcohol. The accused allegedly operated the vessel erratically and collided with other vessels and a break-wall. Following the accused's arrest, he made statements to police officers which were tendered into evidence by the Crown prosecutor. The accused sought to exclude the statements on the basis that they were not made voluntarily. The accused submitted that the *Canada Shipping Act* and the *Small Vessel Regulations* required him to make a report under certain circumstances following a boating accident.

Held: The accused has the burden of showing on the balance of probabilities that his statements to the police were made because of his honest and reasonably held belief that he was required to make such statements by law in order to report the accident to the person to whom the report was given. The court concluded that at the time that the statements were made, the accused did not believe he was making the report as required by the Regulations. The accused did not have the honest, subjective belief that he was making a regulatory report. There was no "police trickery", threats, inducements or promises that led to the statements. The statements were voluntary and admitted.

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Evidence & Procedure

Vancouver Pile Driving Limited v. Canada, 2021 FC 129

Federal Court, February 9, 2021

Expert Witnesses – Production of File at trial

Précis: The working files of experts tendered at trial are producible.

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Vancouver Pile Driving Limited v. Canada

Facts: This lawsuit involved a crane on a barge which was being towed by one defendant. The crane struck a bridge and was damaged. The Government of Canada, who was responsible for the Canadian hydrographic service was added as a party on the basis that charts relating to the clearance height of the bridge were inaccurate. The plaintiff indicated at the pre-trial conference that it was going to call an expert. It later decided not to do so. The defendant also sought production of the working files of the experts.

Held: While a party may be bound by the representations it makes at a pre-trial conference, the fact that it indicates at a pre-trial conference that it intended to rely on a particular expert, it is not compelled to call that expert at trial. With respect to experts that are called at trial, once an expert's reports are served, privilege in relation to the report and the working files of the expert is waived. The facts and evidence on which the expert bases his or her report must be produced and this includes letters of instruction or communications from counsel to the expert.

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Evidence & Procedure

O'Leary v. Ragone, 2021 FC 185

Federal Court, February 26, 2021

Production of Documents – Crown Brief

Précis: The Crown brief in connection with the charges laid against vessel operators was not producible in the civil litigation prior to determination of the charges.

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O'Leary v. Ragone

Facts: This litigation arises out of a fatal boating accident that occurred on Lake Joseph, Ontario. The accident was extensively investigated by the Ontario Provincial Police and charges were laid against both operators by the Public Prosecution Service of Canada. In the course of the prosecutions, the Crown Brief was disclosed to the criminal defence counsel of both operators. Both operators had brought actions in the Federal Court of Canada to limit their liability pursuant to the *Marine Liability Act*. The defendants, who were personal injury/wrongful death claimants, brought a motion seeking production of the Crown Brief or in the alternative an Order compelling the Ontario Provincial Police to produce an officer to be examined on discovery.

Held: One of the defendant's set of charges had not yet been to trial, although would be later in the year. The Public Prosecution Service of Canada was prepared to disclose information from the Crown Brief after the trial. Although the defendants (injury/wrongful death claimants) claimed it would be unfair to proceed as it impeded their ability to investigate and find witnesses, the Court found that they could still conduct their own investigation. Fairness did not require immediate disclosure of the Crown Brief. In addition, premature disclosure of the Crown Brief could jeopardize the integrity of criminal prosecutions and the fair trial right of the accused. There was considerable public interest in the incident by the media and details gathered by journalists were being widely disseminated. There was a legitimate concern that information contained in the Crown Brief could feed media reports, rumours or gossip, come to the attention of witnesses and might influence the criminal trial. The possibility that premature disclosure of the Crown Brief may jeopardize the integrity of a criminal prosecution has been recognized as a serious policy and public interest consideration and is a strong factor militating against disclosure at this time.

In addition, Crown immunity provides that the Crown, including the Police officers, are immune from discovery unless it has been removed by a clear and unequivocal expression of the legislature. The Court was satisfied that the Ontario Provincial Police cannot be compelled to designate an officer to be examined for discovery in this matter.

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Evidence & Procedure

Carnival Corporation v. Vancouver Fraser Port Authority,
2021 BCSC 643

British Columbia Supreme Court, April 8, 2021

Evidence – Use of Discovery Transcript at Trial – Necessity and Reliability

Précis: The Court permitted the use of a discovery transcript at trial where the witness died before trial as it was necessary for a just result on the merits.

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Carnival Corporation v. Vancouver Fraser Port Authority

Facts: A cruise ship struck a floating concrete fender as it was docking at the Canada Place Terminal in Vancouver, British Columbia on July 25, 2007. The vessel suffered propeller damage and the terminal suffered damage to its concrete fender. The parties were engaged in litigation that the terminal failed to provide safe berth or that the ship was poorly navigated. The ship's captain, who was at the helm at the time that the collision occurred, was examined for discovery in 2015. He died in 2019. The plaintiff, Carnival Corporation, who was the employer of the Master, sought to use the transcript from his examination for discovery in evidence at the trial scheduled for April 2021. The defendant Port Authority opposed.

Held: The Court first examined the British Columbia Supreme Court Rules of Procedure with respect to the admission of discovery evidence at trial and held, based on binding authority, that a party is permitted to tender the transcript from its own examination for discovery in cases where the deponent was deceased. Since the evidence on discovery would be hearsay, the Court considered the necessity and the reliability of the evidence. The evidence was necessary since the Captain who was at the helm at the time of the collision was deceased. The Court found that the evidence would be sufficiently reliable in that the Captain was examined under oath by three lawyers, the questioning was probing as to his recollection, the transcript did not indicate that he was acting as a partisan witness and there was other evidence, i.e. testimony of the other bridge crew and videos of the docking, which was independent and available to test his evidence. The Court found that the discovery evidence was sufficiently reliable to justify admission even though the Captain could not be cross-examined at trial. While the plaintiff could have proceeded with more diligence once it became aware that the Captain was ill, the evidence was admitted as necessary for a just result and justice would be better served by its admission compared to its exclusion.

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Evidence & Procedure

Kreig v. Shallon Marine Service, 2021 BCSC 670

British Columbia Supreme Court, April 13, 2021

Surveyors – Privilege – Dominant Purpose

Précis: Portions of a marine surveyor report dealing with the cause of the loss was properly privileged in a subrogated action on the basis of litigation privilege.

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Kreig v. Shallon Marine Service

Facts: The plaintiff was the owner of a vessel that suffered a catastrophic engine failure. The defendant was a mechanic who carried out an engine rebuild on the vessel shortly before the failure. The plaintiff alleged that the defendant was negligent in its engine rebuild work which caused the failure. Immediately following the engine failure, the plaintiff, and its insurers retained a marine surveyor to inspect the damage, investigate the cause of the failure and advise on repairs. A marine survey report was produced in the litigation, although a section entitled "engine failure analysis" was redacted. Shortly following the receipt of the survey report, counsel for the plaintiff's insurer wrote to the defendant advising of a potential liability claim. The defendant retained counsel immediately thereafter. The issue was whether the redacted portion of the survey report was producible.

Held: Litigation privilege has two requirements. First, litigation must be a reasonable prospect at the time that the document was produced and secondly, the dominant purpose of the production of the document must be for assisting in the litigation. The Court found that the report had multiple purposes, many of which were not in any way related to litigation. Those parts of the report were properly disclosed. Where it is possible to clearly segregate sections of a document that were created for the dominant purpose of litigation from those that were not, the Court can allow the material to be severed to maintain litigation privilege. The Court found that the insurer reached a conclusion on coverage before it paid for the cost of repairs and the engine failure analysis section of the report provided a basis for the conclusion that the failure was a direct result of the work of the defendant. The Court therefore inferred the dominant purpose of the redacted section was for a potential subrogated claim against the defendant. The section of the report was therefore written when litigation was a reasonable prospect and litigation was the dominant purpose of the engine failure analysis section of the report.

Injunctions

Krieser v. Garber, 2020 ONCA 699

Ontario Court of Appeal, November 5, 2020

Injunctions – Nuisance – Dock removal

Précis: An injunction requiring a land owner to remove a dock that constituted a nuisance was upheld.

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Krieser v. Garber

Facts: The appellants hired a construction company to build a dock at their waterfront property. A permit was obtained from the provincial government, however due to an error by the contractor, the dock was built out of conformity with the permit. The resulting dock once completed curtailed the neighbour's use of their waterfront property including the marine rail system used for their boat. At trial, the judge held that the dock was a nuisance and issued an injunction requiring that it be removed. The judge also awarded punitive damages against the contractor and the land owner.

Held: Nuisance is an interference with the use or enjoyment of land that is both substantial and unreasonable. The focus is on the harm that is suffered, not the fault or the nature of the conduct giving rise to the harm. The trial judge's decision engaged the proper legal test and his analysis was based on the evidence. There was no error in finding that the dock constituted a nuisance. An injunction is the ordinary remedy for a nuisance. The trial judge's order requiring removal of the dock was grounded in the evidence and upheld. The trial judge also awarded punitive damages against the construction company, which was not supported by the evidence. However, the award of punitive damages against the land owner that refused to remove the dock was upheld.

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Judicial Sale

RMI Marine Ltd. v. The Scotia Tide

Federal Court T-1460-18, June 5, 2020

Judicial sale - extension of time – interests of justice

Précis: A creditor of a vessel to be sold by the Admiralty Court was permitted to file its claim after the court-imposed deadline as it was in the interests of justice.

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RMI Marine Ltd. v. The Scotia Tide

Facts: The *SCOTIA TIDE* was subject to a judicial sale order by the Federal Court. The order required all creditors to file an affidavit asserting its claim against the vessel by a certain date. One creditor, the Monitor of the ship - owner's bankruptcy process, failed to meet the deadline in respect of its claim. The creditor then sought an order to extend the time to file its claim.

Held: The purpose of the Federal Court's ship sale rules and the sale process orders are to bring closure to the making of claims so that the operation of dividing up the ship sale proceeds may be concluded within a reasonable time leading to a just, most expeditious and least expensive determination. The court has a discretion to extend the time made in an order where the party establishes: (a) A continuing intention to pursue its rights; (b) The creditor's claim has some merit; (c) There is no prejudice arising from the delay; (d) There is a reasonable explanation for the delay. It is not necessary for all four criteria to be satisfied as the overriding consideration of the court is that the interests of justice be served.

At this stage of the process, it is not the role of the court to make a final determination on the merits of the claim, as the applicant only needs to show that it has an arguable case. The applicant was able to establish an arguable case, but its conduct did not display a continuous intention to pursue its claim against the vessel, and in addition had no reasonable explanation for the delay as it knew of the court-imposed deadline. There was no evidence of prejudice arising as a result of the delay. However, since the overriding consideration is the interests of justice be served, the court granted the extension of time. While this was a "close call", the court considered that the Monitor had expended funds which were used for the preservation and maintenance of the vessel which ended up to the benefit of all creditors. The extension of time was granted.

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Jurisdiction

La Capitale General Insurance Inc. v. Celebrity Cruises Inc., 2020 QCCQ 8541

Court of Quebec, December 16, 2020

Jurisdiction – Athens Convention – Loss of luggage

Précis: The Quebec court did not dismiss a subrogated claim for loss of luggage against an international cruise line based on lack of jurisdiction.

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La Capitale General Insurance Inc. v. Celebrity Cruises Inc.

Facts: Two Quebec residents booked a Mediterranean cruise on a Celebrity Cruise Lines vessel. In the course of embarkation in Italy, Celebrity lost one of their pieces of luggage, which contained valuable jewellery. The passengers were paid for their loss by their insurer, who brought the subrogated action against the cruise line. The cruise line sought to have the case dismissed on a preliminary basis due to lack of jurisdiction of the Quebec courts and the time bar found in the Athens Convention.

Held: The Athens Convention on Passenger Carriage is a part of Canadian law, which has been incorporated into the *Marine Liability Act*. However, based on the facts alleged in the original pleading, the Athens Convention did not render the claim inadmissible and was not time-barred. The court was not able to decide on a preliminary basis that the passengers had knowledge of and consented to the jurisdiction clause in the passenger ticket. Therefore, the application to dismiss for lack of jurisdiction was denied.

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Jurisdiction

R. v. Great Lakes Stevedoring Company Ltd.,
2020 CARSWELLONT 10853

Ontario Court of Justice, June 4, 2020

Jurisdiction - Stevedoring - Environmental offences.

Précis: Provincial environmental protection laws are not unconstitutional in respect of charges against a stevedoring company operating on federal land.

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R. v. Great Lakes Stevedoring Company Ltd.

Facts: Great Lakes Stevedoring Company, along with other defendants, operated a stevedoring business in the Welland Canal including a marine terminal which loaded and unloaded foreign ships. The marine terminal was located on federal Crown land and part of the St. Lawrence Seaway. While discharging a vessel with cement clinker, some of the clinker escaped and fell onto nearby homes and properties. The defendants were charged with the unlawful discharge of a contaminant into the environment contrary to the provincial legislation, the *Ontario Environmental Protection Act (OEPA)*. The defendants asserted that the legislation did not apply because stevedoring on federal property is within the exclusive core of federal jurisdiction. The provisions of the *OEPA* under which they were charged entrenched upon federal jurisdiction over navigation and shipping and federal public property.

Held: The federal parliament has exclusive jurisdiction over navigation and shipping and that includes stevedoring as the handling of goods at the dockside as an integral part of shipping. However, the *OEPA* does not intrude upon any matter indispensable to the loading and unloading of cargo. It simply requires that it be done in a manner so as not to release contaminants into the environment. The legislation does not impair the federal government's power over navigation and shipping. In addition, the mere fact that other legislation such as the *Canada Marine Act* and the *Seaway Regulations* permit an activity does not mean that the actor is excused from compliance with other valid provincial legislation. While the purpose of the *Canada Marine Act* is to balance trade and commerce with other interests, that purpose does not oust provincial jurisdiction over the environment.

Maritime Liens

United Yacht Transport LLC v. Blue Horizon Corporation,

2020 FC 1067

Federal Court, November 18, 2020

Maritime lien - summary trial.

Précis: A yacht transport company was entitled to summary trial and judgment for the cost of transporting a yacht.

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United Yacht Transport LLC v. Blue Horizon Corporation

Facts: The plaintiff transported a yacht owned by the defendant from Florida to British Columbia. The plaintiff did not pay the freight charge and related costs and disputed certain aspects of the amount charged by the defendant. The plaintiff also claimed a set-off for the cost of fuel removed from the yacht to lessen its weight before loading. The defendants sought a summary trial, which the plaintiff opposed.

Held: The court was satisfied that the case could be determined by way of a summary trial over the defendant's objections. The dispute centred over the booking note and email correspondence between the parties which were in the evidence. The issues could be satisfactorily determined based on the documents despite credibility and hearsay objections made by the defendant. One of the main issues was the accuracy of representations relating to the weight of the yacht. When the yacht was delivered to the transport vessel it was too heavy to be lifted. Arrangements were made to remove fuel from the yacht to lighten it to enable it to be lifted on board the vessel. The court found that the terms of the booking note were clear and unambiguous and no negligent misrepresentation had been made by the plaintiff that induced the defendant to believe that the weight of the yacht was not important. An ancillary agreement was made between the parties to take steps that were in the best interests of the defendant in order to avoid not loading the yacht and incurring deadfreight. The fuel was removed to enable the vessel to be loaded. The defendant was entitled to a set-off from the plaintiff's claim for some of the value of the fuel.

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Passenger Carriage

Sperling v. Queen of Nanaimo, 2020 BCSC 1852

British Columbia Supreme Court, November 27, 2020

Carriage of passengers - Agents of carrier - Preliminary determination

Précis: The issue of whether certain service providers to a vessel were "agents" of the carrier under the Athens Convention could not be determined on a preliminary motion.

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Sperling v. Queen of Nanaimo

Facts: The plaintiff was injured while on board a ferry which struck a dock. The plaintiff was thrown from a chair and struck her head. The plaintiff sued the owner and operator of the ferry as well as certain defendants that were alleged to have been involved in the design, construction, maintenance and repairs of the operating and propulsion systems of the vessel. Those defendants sought a preliminary determination declaring that their liability was limited under the Athens Convention as they were agents of the carrier.

Held: The Athens Convention on Passenger Carriage has the force of law in Canada and includes transportation between places in Canada. Under the Athens Convention, the plaintiff has the benefit of the presumption of negligence in cases of collision, but also faces a monetary limit on her damages. The decision on a preliminary determination of an issue by the court is discretionary. The applicants argued that they were "agents" of the carrier. An agent could include anyone performing work for a carrier that a carrier would be otherwise required to perform itself, even if an independent contractor. However, in this case, whether the defendants were "agents" could not be determined without extensive evidence of the work performed and how it was performed. The ruling sought would likely not be decisive or shorten the trial and the issue should be reserved to the trial judge.

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Passenger Carriage

Knight v. Black, 2021 BCSC 19

British Columbia Supreme Court, January 7, 2021

Passengers – Applicability of Athens Convention – Commercial Operation

Précis: The injured plaintiff was found to be a passenger on board a vessel and was therefore subject to the limitation of liability provisions in the Athens Convention incorporated into the Canadian *Marine Liability Act*.

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Knight v. Black

Facts: The plaintiff was an employee of the Department of Fisheries and Oceans. The Provincial Government of British Columbia and its contractor were conducting highway road maintenance, which included concerns about the stability of the roadway due to potential riverbank erosion. The plaintiff, along with others from the Ministry of Transport and its contractor were on board a vessel in the river conducting reconnaissance of the riverbank erosion when the vessel struck a sandbar. The plaintiff was injured. The defendant vessel operator sought to limit his liability pursuant to the provisions of the Athens Convention. The defendant who operated the boat was paid $200 per hour for use of his boat, although he did not normally operate it as commercial vessel.

Held: The plaintiff argued that the hiring of the vessel from the defendant was not a contract of carriage but a charterparty for the use of the vessel on the day of the accident. The Court concluded that depending on the circumstances, a conclusion that an agreement is a charterparty does not preclude that there may also be a contract of carriage. A contract of carriage has four elements: 1) there is a contract; 2) made by a carrier; 3) for the carriage by water of; 4) a passenger. All four of those elements existed and made the agreement to transport the plaintiff by boat a contract of carriage. The plaintiff did not pay for the hiring of the boat, but rather that was made by either the contractor or the Ministry of Transport. However, it is not a requirement that the passenger be the person to have direct privity of contract with the carrier. It does not require the passenger to make the contract so long as the journey itself is made pursuant to a contract.

The defendants asserted in the alternative that even if the plaintiff was not a passenger, the Athens Convention under the Canadian *Marine Liability Act* applies as the plaintiff did not come within certain exceptions to the *Act* including persons carried on board a ship "on the business of the ship" or a ship operated for "other than a commercial or public purpose". The court concluded that the plaintiff's business was the survey work related to the riverbank erosion and not the operation of the ship and therefore she was not "on the business of the ship". Similarly, although the defendant did not consider himself to be a commercial operator of the vessel, nor did he insure the vessel for commercial use, he was paid for the use of the ship on the day of the accident. At the time of the accident, the ship was being operated for a commercial purpose and therefore the exception did not apply.

My reflections on the cases

1. **This was a year of procedural cases**

   - Likely pandemic related. Cases moved, but fewer substantive, final determinations.

2. **No real significant legal cases**

   - Not a year of major decisions

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