Interest groups rarely appear as intervenors in the leave process even though the Court's rules do not forbid or preclude such briefs. To the extent amicus briefs provide the U.S. Supreme Court with a measure of the public interest in cases, comparable indicators of public importance are not available to the panels reviewing leave to appeal applications in Canada. Interest groups or intervenors unless they are direct parties in the cases are conspicuously absent in the Canadian agenda setting process.

Three other procedural features distinguish Canada from the United States. First and perhaps most important are the rules affecting the linkage between agenda setting decisions and decisions on the merits of cases. The American literature suggests that strategic considerations play a part in the justices' votes on certiorari. Strategic behavior in the United States reflects the fact all nine justices participate in both decisions. With few exceptions, after conference, the justices sit *en banc* when deciding the merits of cases. The American norm is not followed in Canada. Not only are leave decisions made by three justice panels, but decisions on the merits are customarily made by panels of five and seven justices. It is a relatively rare occasion for the present court to sit *en banc* to decide appeals. In 1991, for example, only 13 of the 110 cases decided by Canada's Court were heard by all nine justices; the vast majority of the other cases were decided by panels of either five or seven justices (Osgoode Hall Law Journal 1994).

At the time leave to appeal applications are considered, the justices do not know with any certainty what the size and composition of the panels deciding the merits of the appeals will be. Unlike their peers on the American court, they cannot anticipate with any assurance what the probable voting alignment of the panel might be. Some of this uncertainty might be mitigated if justices on the leave panels expect that the chief justice will appoint them to the panel to decide the merits of the cases for which they recommended leave to appeal. They will not know, however, what the size of the panel will be or the identity of the other justices except for appeals from Quebec where the francophone justices will be assigned to hear the cases. At present there is no empirical evidence on the overlap between the two sets of panels.

The strategic context of the Canadian justices differs in two other ways from their American peers. First, Canada's Supreme Court typically is more likely to affirm lower court decisions than the United States Supreme Court. During the 1991 term, for instance, Canada's Court affirmed 66 percent of the