The use of panels by Canada's Supreme Court has no parallel in the American court. In the United States, the nine justices sitting in conference vote on whether to grant certiorari or not. In Canada, panels of three justices make these decisions prior to conference which may ask a panel to reconsider a decision; however, the panel has the final say over its actions. The use of panels arose out of a 1956 amendment to the Supreme Court Act that required a quorum of three justices for the review of leave to appeal applications.[6] The Chief Justice appoints the panels generally for the length of the Court's term, but the tenure of the panels varies as illness, resignations or retirements, appointments, or special needs prompt reorganizations. Table 4 shows the panels for 1993-1997. As this table indicates, the panels were not changed in 1995; instead the Chief Justice carried them over for another year. For the three focal years, 1993-1995, there were ten panels (including the Quebec panel formed in 1994) that decided whether to allow or deny leave to the vast majority of applications filed during in these years.

TABLE 4 ABOUT HERE

The panels, it appears, do not routinely meet as a collective body to make their decisions.[7] Instead the justices communicate their votes with the other members of their panels through memos. Since only two votes are required to grant a leave, a justice needs only one other vote to muster a majority. The general view, however, is that most panel decisions are unanimous. Indeed, a preliminary look at the data indicates that virtually all leave decisions are unanimous. The meaning of these data is ambiguous, however. The problem resides in the fact the vote reported in the *Bulletin* may be the final vote after conference and not the panel vote. A justice on the panel who disagrees with the panel decision may change his or her vote after discussion at conference.

Panels notify the non-panel justices of their decisions prior to conference by placing them on an "appendix." If a panel chooses to defer an application because the issues raised by it are already before the Court, the application is placed on "Appendix C" pending the outcome of the Court's actions.

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[6] Prior to this time, leaves to appeal were relatively infrequent and decided by a single justice. The change was introduced in 1956 after considerable criticism of a justice who denied leave in 1954 in a highly publicized criminal case (Crane and Brown 1993, 6).

[7] Justice Sopinka is vague on this point. He and his co-author write: "The panel seized of the application processes it with each member of the panel voting either to grant leave or dimiss" (Sopinka and Gelowitz 1993, 171).