

start of the Court's term as part of the clerks' orientation in which he explained what the clerks should look for in the applications. Soon after, checklists were tacked on the clerk's work cubicles as reminders of the criteria. New clerks also learn from older clerks as they are leaving the Court what standards they should apply. As in the United States, the clerks presume that most applications should be denied. One clerk recalled that out of the 22 applications he reviewed he did not recommend one of them to be allowed.

The presumption that leave should be rationed raises a dilemma on occasion for clerks. There are times when clerks feel that the merits of a case deserve attention but for one reason or another the leave application is inadequate or fails to identify or raise the issues clearly. To recommend that leave be allowed, however, could mean that the attorney may not properly or adequately argue the issue. Clerks recognize the possible injustice that denying leave may impose on the appellant but they also recognize that other cases will probably come along with similar issues. More important than this, however, they realize that a poorly presented case may be even a greater injustice. A final and related point is that clerks are tempted on occasion to serve as advocates on particular issues. Some succumb, others do not. Within the constraints imposed on them by their position and their relationship with their justice, clerks may push hard to have an application granted leave. Most clerks readily recalled clerks who rather routinely adopted this posture and others who did not. Attorneys who were repeat players before the Court knew their arguments had to attract the interest of the clerks and felt their chances of success were greater if they succeeded.

Memos prepared by clerks in the cert pool in the United States circulate to all eight of the justices in the pool. They provide the basis for "marking up" petitions when the justices and their clerks review them prior to conference. In Canada, clerks' memos are sent to the three justices on the panel with single page summaries forwarded to the other six justices. This represents a considerable reduction in information to the process in Canada. It means that a single clerk and two or three justices more or less determine the outcome of leave applications. One justice, however, routinely assigns his clerks to review leave applications even when they are not assigned to his panel. This means that the other five justices depend on the one-page cover sheets to the memos to alert them to what is happening on the other panels.