

**In a Different Voice: Sex Differences in Economic Cases
Decided by the Canadian Supreme Court**

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Paper prepared for presentation at the annual meeting of the Canadian Political Science Association, Saskatoon, Saskatchewan, May 31, 2007.

Introduction

Assessing sex and gender differences between top-level policy-makers has become a prominent focus of inquiry in many social science disciplines, including the field of law and courts. Since the number of females appointed to appellate courts has been on the rise over the past two decades, it has become more feasible to explore the degree to which gender differences exist on the courts and to examine how such differences will impact the law and judicial behavior. This study is animated by such concerns and analyzes the question: Do female judges on the Canadian Supreme Court approach the law differently than their male colleagues? To address this question, we apply two competing theories of behavior, namely the "different voice" hypothesis articulated by psychologist Carol Gilligan (1982) and the theory of attitudinal assimilation, drawn from the fields of sociology and cultural anthropology. We use these theories to assess whether male and female justices maintain distinct voting patterns in economic cases or whether any differences, if found, simply disappear over time because the justices become more acclimated toward each other. This study explores gender differences through two distinct conceptual lenses: 1) at the macro-level by looking at how female justices impact their work group environment as measured through patterns of unanimity in all cases handed down between 1973-2005 and, 2) at the micro-level by utilizing three different methodological techniques to assess whether they vote differently in union disputes. Examining this question is critical because if substantive differences do exist between male and female justices, they will have important policy ramifications. Moreover, any differences found should be of keen interest to scholars outside the judicial field who seek to understand how women foster change once they acquire critical leadership positions in the political arena.

We chose to study gender difference on the Canadian Supreme Court for a couple of reasons. First, justices serving on this court, unlike those found on lower appellate courts, are far more likely to vote according to their own personal values simply because they sit at the pinnacle of the judicial hierarchy. Since they are not seeking higher office, do not see themselves as primarily norm enforcers, and do not fear appellate review, they are far more likely to express gender differences in their voting behavior than judges who serve on lower appellate courts (see Segal and Spaeth 1993, 2002). Second, we chose to study the impact of women on the Canadian Supreme Court because four female justices currently serve on this high court and a female, Justice Beverley McLachlin has served as chief since 2000. Her tenure at the helm of the court provides us with the unique opportunity to assess how her leadership style differs from her two male predecessors, and whether the women on the Court vote remarkably different from the men at either the micro or macro-level.

Factors that Shape Sex and Gender Differences

The groundbreaking work of Carol Gilligan (1982) provides a theoretical foundation for understanding why men and women might approach the field of law and politics from different perspectives. Gilligan's research led her to conclude that men view the world in a more linear, hierarchical, abstract and individualist manner. As such, they are much more likely to resolve moral conflicts according to abstract idealized rules that are incorporated in the language of rights and are ultimately applied in a zero-sum, all or nothing fashion (Gilligan 1982, Palmer 2001b, 92). According to Gilligan, women, in contrast, see the world in terms of a web of interconnected relationships that make up a larger interdependent community. Over the course of their life cycle they develop a more keen ability to empathize with the feelings and needs of

others because they more readily identify with the role of caretaker and nurturer. As such, they are more likely to resolve moral conflicts in a more conciliatory fashion by utilizing the language of reconciliation and responsibility to the well-being of others and the community at large (Gilligan 1982). Ultimately, Gilligan's work suggests that women will view the world through distinct lenses and will tend to speak with "a different voice" than men.

The foundations for Gilligan's hypothesis can be traced to a number of academic disciplines, such as psychology, linguistics, anthropology, and, more recently, genetic biology. In the latter field, Baron-Cohen (2003) relied on numerous scientific studies to conclude that the brains of females are predominantly hard-wired for empathy, while males tend to be hard-wired for systematized learning governed by rules and analytic relationships. The claim that different attitudes might flow from genetic sources gains further support from recent scholarship by genetic biologists and political scientists whose research illustrates a link between genes and the development of certain social and political attitudes (see Alford et. al. 2005, 153; Bouchard and McGue 2003; Crelia and Tesser 1996; Scarr and Weinberg 1981; and Tesser 1993). Although the assertion of a biological linkage may be problematic to some because of the normative implications associated with biological determinism that have been articulated in the past, such normative implications need not be asserted. Rather, as Gilligan and Baron-Cohen suggest, the fact that women approach the world from a different perspective means that their views need to be explored more extensively and integrated into the political lexicon of society.

Social scientists are more comfortable locating the roots of the different voice argument in socialization processes and life cycle effects. Indeed, the disciplines are replete with studies suggesting that various cultural forces, such as parenting styles and sexism in the educational system and workplace environment help shape and perpetuate gender difference at different stages of the life cycle. For example, studies in the field of social psychology indicate that girls more readily share toys with others, show a greater concern for fairness, engage in "feminine" activities of play, and are less aggressive than boys (see Baron-Cohen 2003, 29-30; Charlesworth and Dzur 1987; Maccoby and Jacklin 1974; Crik and Ladd 1990; Fagot 1974, 1977; Snow et al. 1983). Research by Tannen (1990) in the field of linguistics suggests that men and women wield different conversation styles that often put women at odds and at a disadvantage in their interactions with men. Specifically, girls and women tend to play the role of listener and try to avoid conflict, while boys and men approach conversations as more of a contest and often try to dominate discourse by interrupting and changing the topic (1990, 182-183, 215; see also Maltz and Borker 1982). Baron-Cohen's (2003) research on emotions and relationships, in turn, indicates that females are much better at detecting a person's feelings from visual cues and non-verbal signals than males. Moreover, they tend to value altruistic and reciprocal relationships, while males favor relationships based on power, politics, and competition (see also Wright 1998, Knight, Fabes and Higgins 1989). Collectively, these studies reinforce Gilligan's different voice hypothesis and increasingly show that differences between the sexes can be traced to an intermingling of both biological and environmental forces. Regardless of the root causes for sex/gender differences, it is clear that the extent to which such differences exist will have a profound and practical impact on the development of politics and law as more women assume positions of power in key policy making institutions.

If female justices do indeed speak with a different voice than their male colleagues, one might question how these disparate views play out on a high court over time. Gilligan and others would contend that any voting differences would persist given that the two sexes approach the law from distinctive vantage points.¹ A contrary theory might posit that the policy preferences of

men and women on the Court would shift toward each other over time, and we label this process attitudinal assimilation. Assimilation is a concept most familiar to sociologists and anthropologists who study cultural acclimation by immigrants and ethnolinguistic minorities into the dominant values and beliefs of a society (see Rumbaut 1997; Gordon 1964; Nelson 1982). One classic definition of assimilation describes it as "a process...in which persons and groups acquire the memories, sentiments, and attitudes of other persons and groups, and...are incorporated with them in a common cultural life" (Park and Burgess 1924, 735). We believe that a similar kind of attitudinal assimilation can likewise occur along gender lines between individuals in a small work group setting, such as a high court. Since justices sit on the bench for a long period of time and are exposed repeatedly to the well-reasoned arguments articulated by members of the opposite sex, it makes intuitive sense to believe they would be persuaded by such arguments and may adjust their policy preferences accordingly (see Peresie 2005, 1782 for a similar argument). One should note that sociologists have recently pointed out that assimilation by immigrant groups may not take place in a linear, holistic fashion (see Rumbaut 1997). Similarly, we contend that gender assimilation on a court will not necessarily appear in a uniform manner across all issues areas, but rather, that it might occur on both sides of the sexual divide depending on the issues being addressed, or not at all. Most notably, it makes intuitive sense to believe that when the Court addresses "feminine" issues, such as sexual harassment and discrimination claims, male justices are more likely to align their views with those advanced by females on the bench because they may be perceived as more knowledgeable, experienced, and credible in such issue areas (for a similar argument see Peresie 2005, 1783). In contrast, outside of the stereotypical women's domain, one might posit that women will more readily align their views with the male justices because they are new to the court and represent the minority voice on the bench. Regardless of which sex is engaging in the acclimation process, the point to be made here is that evidence of attitudinal assimilation on a court is likely to take different forms across different issue areas. Overall, what we identify as attitudinal assimilation stands in direct competition with Gilligan's "different voice" theory as an alternative, viable theoretical explanation for how voting differences between the sexes play out on courts over time.

Over the least several decades, numerous political science studies have emerged examining Gilligan's hypothesis, and gender differences have been demonstrated in several sub-fields, such as public opinion and voting (see Hurwitz and Smithey, 1998; Seltzer et al. 1997), Congress and legislative behavior (see Leader 1977; Mandel and Dodson 1992; Duerst-Lahti 2002; Duerst-Lahti and Kelly 1995; Kathlene 1994, 1995), and interest groups (Nownes and Freeman 1998). Although the bulk of studies in these various sub-fields reinforce Gilligan's theory, research on courts and judicial behavior has yielded mixed results to date. A number of studies at the trial and U.S. appellate court level have found marginal or no differences in male-female voting and writing patterns (for examples, see Kritzer and Uhlman 1977; Gruhl, et al., 1981; Walker and Barrow 1985; Davis 1986; Gotschall 1983; Davis 1993a, 1993b; Aliotta 1995; Maveety 1996; Van Sickel 1998; Segal 2000; Songer and Clark 2002). Collectively, these studies do not provide strong support for Gilligan's hypothesis of a different voice. In contrast, other scholarship shows that gender differences exist in particular types of legal disputes that have issue significance for women, such as sex discrimination (for examples, see Allen and Wall 1987; Martin and Pyle 2000; Gryske et al., 1986; Songer and Crews-Meyer 2000; Peresie 2005; Songer et al. 1994; Davis et al. 1993; Sherry 1986; Behuniak-Long 1992; Sullivan and Goldzwig 1996; O'Connor and Segal 1990). Ultimately, Martin (1993, 128) provides a good assessment of the research to date by indicating that although recent empirical scholarship fails to support

Gilligan's contention that female judges "speak with a different voice," there is clear evidence that "women judges are making a distinctive contribution to our legal system...most evident(ly) in areas involving issues of gender fairness."

One important component of Gilligan's theory that has received little notice in the public law literature is the contention that women are more collaborative, collegial, and willing to cater to the view of others. According to Baron-Cohen (2003, 42-45) psychological studies of group dynamics show that females prefer to operate in smaller group settings, tend to network more extensively with other group members, and try to develop agendas that more readily cater to the feelings and desires of others. Males, in contrast, are more interested in climbing the social hierarchy of a group, taking on leadership positions that often come at the expense of the feelings of other members of the group. The question remains whether these differences are borne out in the small group dynamic of the judicial decision-making. The implication is that once female justices are elevated to the high court, they will foster greater rates of unanimity overall in an effort to encourage collegiality. Thus, although women might articulate a different voice argument in specific sets of cases, their overall style of interaction will foster greater degree of collegiality across a broad swath of cases.

Although there has been much less scholarship examining gender differences in the Canadian setting, the research has yielded mixed results as well. A recent comparative study by Songer et al. (2003) revealed little differences in the male and female voting records of Canadian Supreme Court justices in either civil liberties or criminal cases. One study on lower court judges by McCormick and Job (1993) indicates that male and female judges exhibited little difference in their criminal sentencing patterns. Yet, scholarship by White (1998, 87-88) suggests that the first three women on the Canadian Supreme Court were far more likely to support fundamental freedoms and equality rights claims than their male counterparts. Overall, the differences that have emerged on both sides of the continental divide can be attributed to a number of factors, including the use of different methodological approaches, assessment of different types of cases, and analysis of different level courts adhering to distinctive institutional norms.

Given the limited research done on gender differences in the Canadian Supreme Court and the plethora of women currently serving on that bench, scholars have a unique opportunity to assess gender differences in a pivotal policy-making institution of an advanced industrial democracy. At the heart of our inquiry, we are interested to see if the introduction of women on the high court has had a significant impact on aggregate patterns of unanimity on the Court. Second, we ask whether female justices vote differently than their male counterparts in labour-management cases. Finally, we are interested in examining whether attitudinal assimilation across the sexual divide is evident in the economic cases decided by the Canadian Supreme Court (1982-2005).

Macro-Level of Analysis

Data and Methods

The empirical portion of this study proceeds in two distinct phases, the first analyzing the Canadian Supreme Court at an institutional level and the second focusing on the voting patterns of individual justices at the case level. The institutional analysis is designed to test hypotheses about the impact of female justices on aggregate patterns of judicial decision-making. We first examine whether the arrival of female justices alters rates of consensus on the court. The

expectation from the feminine voice argument is that rates of consensus should increase with women on the court because they have a greater tendency to encourage collaboration and collegiality, and are less inclined to exhibit individualistic behavior than their male colleagues across a broad swath of cases. This study measures consensus by analyzing the percentage of unanimous rulings in cases argued in each year. Unanimity is measured from the 1973 to 2005 years, using data for orally argued cases from database of decisions compiled by the authors. This time frame was chosen in order to examine Canadian decisions spanning the Laskin, Dickson, Lamer, and McLachlin Courts (1973-2005), and to capture a significant number of years prior to Justice Bertha Wilson's appointment as the first female justice to serve on the Court.² This institutional-level analysis relies on time series techniques to test whether the rate of unanimity is altered in any substantive way when female justices are elevated to the Supreme Court, and whether that rate increases as more females are appointed to the top bench.

At the institutional level, we control for other factors that might explain higher or lower rates of agreement on the Canadian Court. For example, since ideological differences among the justices might drive conflict on the bench, we introduce a control variable that measures the percent of justices appointed by prime ministers of the same party in each year. Obviously, when more justices on a court are from the same political party, there is a greater likelihood that unanimity will prevail. As a result, we expected a positive coefficient for this indicator. A second control variable measures the workload of the court by tabulating the number of cases argued in a given year. The presumption here is that in years where caseloads are higher, justices will feel more pressure to resolve cases in a more efficient manner. As such, it is expected that justices will pen fewer concurring and dissenting opinions and greater unanimity will emerge on the court in these years. A third control variable accounts for the average panel size in each year or term. This variable was included in the analysis because, in the Canadian context, the court typically hears cases in panels of five, seven, or nine justices. In years where the average panel size is lower, it is logical to expect higher rates of unanimity, simply because it is easier to get consensus in a group of seven than a group of nine. We report the data results using ordinary least squares (OLS) regression, but readers should be aware that we initially used time series models that applied ARIMA techniques to test for autocorrelation in the data (see McDowell et al. 1980; Ostrom 1978). We chose to report OLS regression results because they are more readily understood by a wider set of readers, and the ARIMA models demonstrated that there was no significant autocorrelation among the error terms in our data set.³ This portion of the study also explores annual voting differences between male and female justices to test for the "different voice" hypothesis across all economic cases. Some might argue that the more nurturing, ethic of care approach that women bring to most issues will lead female justices to be more sympathetic to the claims of economic underdogs. Annual levels of liberal voting in economic cases may reveal a gender gap in such cases, and if so, the data would confirm Gilligan's hypothesis.

Results

Female Justices and Aggregate Patterns of Institutional Change

At the aggregate level, the time series regression equation produced model results that do an impressive job of explaining the varying degrees of unanimity in the Canadian Supreme Court (see Table 1). The equation produced an F Test score that was statistically significant at the 99.9% confidence level ($F = 6.33$). The adjusted R Square value indicates that the six variables

in the equation account for 51 percent of the variance in rates of unanimity in the Canadian Supreme Court between 1973 and 2005. The Durbin-Watson statistic indicates that there is no serial autocorrelation in the error terms after a lagged variable was introduced into the equation (see Ostrom 1978).

Turning to the individual variables in the equation, the data reveal that the introduction of women to the Canadian Supreme Court in 1982 did not significantly increase the number of unanimous rulings handed down by the Court, although the coefficient was in the expected positive direction ($b = .05$, see Table 1). This finding does not provide strong support for the feminist argument that when women join the court there is a greater likelihood that they are able to foster greater cooperation and cohesion on an aggregate level. However, a similar analysis of rates of unanimity in the U.S. Supreme Court indicates that the introduction of females to that Court has produced a statistically significant impact on collegiality (see Wetstein and Ostberg 2007). Perhaps one explanation for the disparity across the two courts is that since the Canadian Court, as an institution, has a much higher propensity to hand down unanimous rulings than the U.S. Court to begin with, the introduction of women to the high court does not dramatically increase the level of unanimity on an already highly cohesive court (an average of 76 percent in Canada and 38 percent in the U.S.).⁴ A second explanation for why women do not have a significant impact on rates of unanimity on the modern Canadian Court might be explained when one examines the voting behavior of the first three female justices in greater detail. Indeed, their voting behavior in civil rights and liberties cases reveals that these justices had no trouble articulating their own views and writing concurring and dissenting opinions. Indeed, two studies of court authorship patterns revealed Justices L'Heureux-Dubé and McLachlin were the two greatest dissenters on the Lamer Court (see Ostberg et al. 2004; McCormick 1994). These findings help refute the contention by some feminist scholars that the first women elevated to courts may be likely to conform to the dominant masculine voting patterns of a traditionally masculine institution. This is certainly not the case on the Canadian high court, where pioneering female justices were willing to speak their own mind on various issues. Indeed, we find it surprising that the coefficient for women justices on the Canadian Court is in the positive direction given the propensity of the initial female appointees to dissent. Overall, our data on rates of unanimity at the macro-level reflect only a minimal feminist impact on the Canadian Supreme Court.

INSERT TABLE 1 HERE

The estimate for average panel size indicates that this factor significantly influences rates of unanimity on Canadian Supreme Court. As expected, in years when an average of one more justice hears cases the rate of unanimity on the Canadian Court drops by six percent (statistically significant at the 99.9 percent confidence level, see Table 1). This finding supports the contention that the more justices who hear a case the greater the likelihood that conflict will emerge on the court. These results highlight an important institutional power that is unique to the Canadian chief justice, namely the power to create smaller panel sizes, which necessarily reduces conflict among the justices. This is a power that the U.S. chief cannot wield. Although Canadian scholars and justices are quick to point out that concerted efforts are made to evenly distribute the workload among justices (see Greene et al. 1998, 119), the times series analysis clearly shows that panel size does influence the overall degree of consensus obtained on a yearly basis.

The two other variables that proved to be statistically significant in Table 1 are the percent of Charter cases heard and workload of the Canadian Court in a given year, although the latter was in the unexpected direction. Not surprisingly, the more Charter cases that are heard by the Court per year, the greater the likelihood that disagreement will emerge on the bench ($b = -.30$, significant at the 95 percent confidence level). Since Charter cases are more likely to deal with controversial issues, we are not surprised that they are likely to generate more disagreement on the Canadian bench. However, we did not anticipate that in years where the Canadian Court hears more cases there would be less agreement among the justices ($b = -.22$, significant at the 99 percent confidence level). This finding suggests that the Canadian justices do not exhibit a greater tendency to simply join majority opinions in years where the workload is heavier. Yet, as mentioned earlier, since the Canadian Court exhibits high rates of unanimity in the first place, the decision to write a dissent or two may not seem particularly burdensome to the justices, and this may explain why the coefficient is negative.

The variable tabulating the percent of justices from the same party did not achieve statistical significance in the model, and was in the unexpected direction. The finding suggests that when the percentage of justices from the same party increases by 11 percent (the addition of one justice), unanimity in Canada actually declines by roughly two percentage points ($b = -.17 \times 11 = 1.87$, see Table 1). The negative sign for this coefficient might be attributed to the fact that the most Supreme Court appointments have not been particularly animated by ideological concerns. Consequently, it is not surprising to find that rates of unanimity are not substantially altered when more justices come from the same party in the Canadian context.

The most important finding to take away from the times series analysis is that the appointment of seven female justices to the Canadian Supreme Court has not produced a dramatic positive impact on overall rates of unanimity. As mentioned earlier, one major reason for this diminished finding may be attributed to the distinctive dissenting voice that several early female justices displayed, most particularly, Justice L'Heureux-Dubé. The question remains whether a feminist difference might appear more readily if one assesses aggregate voting behavior on the Canadian Court from the perspective of Gilligan's "different voice" hypothesis in a particular policy area. For example, are female justices more likely to support economic underdogs than their male counterparts because they have experienced economic discrimination in their lives and thus are more likely to empathize with economic underdogs? We examine this hypothesis by analyzing the liberal voting patterns of male and female justices over time in economic cases (1982-2005).

Turning to Figure 1, it is remarkable how closely the liberal voting percentages for the men and women move in tandem with each other over time. This parallel tendency is not surprising when one keeps in mind the high rates of unanimity that exist on the Canadian Court. Yet, a closer examination of the graph does show that female justices on the Canadian Court handed down a greater percentage of liberal rulings than their male counterparts over time, which is demonstrated in 15 of the 23 years assessed in the figure. One must be careful not to be deceived by this visual gender gap, because when a difference of means test is applied to the male and female voting patterns, only a four percent aggregate gap appears in the data. While the female justices had a 56 percent liberal average, their male counterparts had a 52 percent score (see the top right of Figure 1). Although these data do not reflect a statistically significant finding, we were curious about what might explain the annual gaps that appear in the time series data. After running several regression models, we found that the introduction of a new member on the high court, regardless of whether it was a male or female, increases the voting gap

between the two groups on the court. This finding suggests that an "in group" effect or "groupthink" scenario might temporarily emerge on the court whenever membership change occurs.⁵ In other words, since the addition of a new member to the bench causes greater instability on the court, it appears to trigger the men to gravitate toward their male cohorts and the women to do the same, thus generating a briefly wider ideological gap between the two sexes. However, we believe this gap dissipates as the court acclimates to its newest member and reaches a new voting equilibrium. This finding bears an intriguing resemblance to the argument that attitudinal assimilation might occur in economic disputes at the individual level. Despite this interesting finding, the overarching theme to take away from the analysis at the aggregate level is that neither rates of unanimity nor liberal voting patterns provide a ringing endorsement for the "different voice" argument at the macro level. Although the feminist hypothesis does not seem to appear on the Canadian Supreme Court at the aggregate level, one is left to ponder whether a micro level analysis might turn up evidence that gets masked at the aggregate level.

INSERT FIGURE 1 HERE

Micro-Level of Analysis

Data and Methods

The second level of analysis examines the voting patterns of male and female justices in a specific set of economic disputes where gender differences are likely to appear, namely labour cases that pit economic underdogs against corporate and management interests. We use three distinct methodological techniques at this micro-level of analysis to explore the hypothesis that female justices will favor the economic have-nots more readily than their male counterparts because they are more likely to have experienced or witnessed discriminatory behavior in the work place environment, and are thus more sympathetic to the harm suffered by individuals in the marketplace. To test this hypothesis we first utilize logistic regression techniques to assess whether females vote more liberally than their male counterparts, with each justice's vote serving as the dependent variable in the equation. The strength of regression analysis is that it allows one to assess the relative impact of specific independent variables on the dependent variable while simultaneously controlling for a variety of factors that might influence judicial voting behavior. For example, this model includes a variety of control variables that tap the ideology of the justices (as measured in newspaper reports at the time of their appointment), and the fact patterns, legal claims and litigants appearing in each case (explained in more detail below). This research mimics earlier work on the Canadian Court by Ostberg and Wetstein (2007). One of the problems with this type of analysis is that it does not account for the skewed nature of the sample and necessarily compares a small number of female votes to a larger set of male votes from different ends of the ideological spectrum. Thus, a second methodological technique is presented featuring a "matched pair" strategy that examines whether male and female justices with similar ideological tendencies vote in the same way, or whether women are indeed more liberal than their closest ideological male colleague on the court. We employ a simplified version of a strategy suggested by Segal (2000) and Boyd et al. (2007) in their examination of gender effects in the U.S. Courts. A third methodological technique was conducted at the micro-level to examine whether male or female justices adjust their voting behavior over time to fit more closely with the other justices that serve on the court with them. This technique, which is

discussed in greater detail below, is modeled after work by Lawrence Baum (1988, 1992), attempts to examine the attitudinal assimilation hypothesis, or the notion that male or female justices might attune their attitudinal voting behavior to more closely align with justices of the opposite sex after several years of service together. Collectively, these three methodological approaches were used because they provide a more complete and nuanced test of gender effects than any singular approach might afford.

The micro level of analysis begins with an assessment of liberal or conservative voting in 85 union-management cases decided by the Canadian Supreme Court between 1984 and 2005 (N of votes = 635). The key independent variable at the case level of analysis was the sex of a justice (female = 1, male = 0). In light of our coding scheme and feminist theory, we expected that female justices, all other things being equal, would cast liberal votes more frequently. This hypothesis is based on the assumption that female justices would be more sympathetic to vulnerable economic interests and union workers because of their own life experiences. The statistical controls built into the model included a measure of judicial ideology drawn from the work of Segal and Cover (1989) on the U.S. Supreme Court, and replicated successfully in Canada (Ostberg and Wetstein 2007, chapter 3). This indicator represents a more nuanced measure of ideology than party identification because it is drawn from journalistic commentary and editorials across a variety of newspapers at the time of a justice's nomination to the court. The ideological scores for the Canadian justices range across a +2 to -2 spectrum of possible rankings, with the scores based on content analysis of the descriptions found in the news coverage. It was expected that justices with higher, more liberal scores on this measure would cast a greater percentage of votes in favor of union workers and economic underdogs in labour cases, resulting in a positive coefficient.

Several case-specific indicators were included in the statistical model to control for certain factual scenarios and case characteristics that were prominent in labour-management cases decided by the Court. For example, the equation includes a variable measuring whether unfair labour practices were alleged against an employer.⁶ Disputes that featured such a charge were coded with a "1" while all others received a "0" score, and it was hypothesized that when companies engaged in foul play at the bargaining table, the justices would be prone to side with the union because of the unfair practices of management. Similarly, we believed that the justices would side with individuals who claimed to have been harassed or discriminated against (1 = harassment/discrimination, 0 = all other cases) because we thought the justices would desire to eradicate any discriminatory practices in the workplace setting. We applied a similar logic to cases featuring allegations of wrongful dismissal by an employee (1 = wrongful dismissal claim, 0 = all other cases). We expected justices to favor these employees because of the perceived unfairness of a layoff or dismissal, at least when compared to cases where such an allegation was not central to the dispute. For all three of these variables, we anticipated a positive coefficient in the equation.

The equation includes a control for cases featuring disputes over unemployment benefits, sick leave, workers' compensation claims, and working conditions (1 = benefits and conditions case, 0 = all other cases). We believed that the justices would exhibit more sympathy to union workers in cases that centered on disputes over benefits and working conditions, mainly because of the significance of such issues to the daily welfare of individual employees and their families. Anticipating that these cases might tug at the heartstrings of the justices, we expected a positive coefficient for such cases. In a similar vein, we included a control variable for cases where unions alleged that employers were illegally contracting out to non-union workers (1 =

contracting out, 0 = all other cases). Assuming that this would violate notions of fairness in the minds of the justices, we expected greater sympathy for union arguments in such cases, and a positive coefficient in the model.

Cases raising a constitutional right to strike claim by a union were also coded for their potential impact on judicial behavior (1 = right to strike, 0 = all other cases). For this measure, we anticipated that the justices would be less sympathetic to union arguments, mainly because the *Charter of Rights and Freedoms* does not explicitly contain a right to strike in the text of the document, and because some workers are forbidden from striking under Canadian law. Since any effort to extend constitutional protection to strike actions might be seen as stretching the fabric of Charter principles, we expected a negative coefficient for this variable. In contrast, when a strike or lockout actually occurred in a labour dispute, we anticipated that the justices would be more prone to side with union workers, mainly because of the immediate economic jeopardy the workers faced in such circumstances. In light of this hypothesis, we coded strike/lockout cases as a "1" and all other cases with a "0," and expected a positive coefficient for this variable (Ostberg and Wetstein 2007, 167).

The last case characteristic controlled for the ideological direction of Labour Board rulings in order to determine if the justices defer to the expertise of such bodies in the field of labour law. Our rationale for including this variable was in recognition of the specialized nature of fact finding in labour disputes, and the belief that Supreme Court justices might extend a degree of deference to the rulings of these tribunals because of their accumulated knowledge of the employment law principles. It is important to recognize that not all labour cases feature such rulings, and as such we developed a trichotomous variable, with liberal Labour Board rulings scored as "1," conservative (anti-union) decisions scored as "-1," and cases without a Labour Board ruling scored as "0." Given this scoring approach, we expected a positive coefficient in the results (Ostberg and Wetstein 2007, 167-68).

Two variables were included in the model to account for the effect of particular litigants and interveners in this field of law. Specifically, we controlled for the impact of blue-collar and public safety workers in a dispute, in comparison to their white-collar counterparts (1 = blue collar, 0 = all others). Our expectation was that since blue-collar workers represent the most economically vulnerable employees in society, the justices would exhibit a greater degree of sympathy for their arguments. A second measure examined the impact of the Canadian Labour Congress (CLC) as an intervener in labour disputes (1 = CLC intervention, 0 = all other cases). Since amicus support for a union's argument from the CLC can bring additional resources to bear in a labour case, such support can possibly sway justices over to the side of the union. Brodie (2002) has suggested that some interest groups have gained particular advantage in the Canadian legal system through their intervention efforts, and the CLC's status as a "repeat player" in the system can help enhance the profile of union arguments in the eyes of the justices (see Galanter 1974, 2003; Flemming and Kurtz 2002a, 2002b, Flemming 2004). In recognition of this logic, we anticipated that CLC intervention would have a positive impact on union chances of success, and thus expected a positive coefficient in the equation.

A final set of control variables included in the regression model assessed whether the contemporary McLachlin and Lamer Courts voted more liberally in union-management cases than the courts led by Chief Justices Dickson. Feminist theory would suggest that since females are more sympathetic to the claims of economic underdogs, once a woman is elevated to the helm of the court, it might be more prone to hand down liberal rulings in such cases. This argument is enhanced in the Canadian context because Chief Justice McLachlin can not only

structure conference deliberations and influence the direction of voting by other justices, but also can wield the power of panel assignment to help foster a more liberal outcome. Thus, we anticipated a positive coefficient for the variable tapping Chief Justice McLachlin's leadership tenure on the Canadian Court. However, we did not posit any directional hypothesis for the Lamer Court variable in union cases. Instead we included it in the model to simply assess whether that court treated union disputes differently than its predecessor.

Before turning to our data results, we would like to provide a more detailed description of how the second and third methodological techniques were operationalized. As mentioned above, we utilized a second methodological strategy that aimed at matching ideologically similar male and female justices on each case to determine if the justices cast votes that were different (or similar).⁷ Since it is assumed that ideologically paired justices will vote similarly in a particular case, any distinctive voting differences between the sexes would necessarily reflect a gender effect at work. As suggested earlier, the advantage of this approach over traditional logistic regression techniques is that the results are not skewed by an over-representation of men in the data analysis, but rather ensures an equal sample of men and women in the analysis, allowing for greater confidence in any conclusions based on indicators of statistical significance (see Boyd et al. 2007, 10-13).

It is important to note that our strategy is a simplified version of the one presented by Boyd et al. (2007) in their work on U.S. courts. For our study we matched each female justice participating in a union case with the nearest ideological male counterpart on that panel. Our match is based on the newspaper ideological scores described above and used in our earlier work. For example, if Justice McLachlin took part in a case, we used her newspaper ideological score of .667 to locate the nearest scoring male justice on the panel (frequently Justice Cory in the Dickson and Lamer Court years), and we included those two justices in a stripped down version of the data set that features such a pairing of justices. Once we matched all of the females with an ideologically like-minded male colleague, we were left with a data set of equal numbers of male and female votes in union cases ($N = 175$ for each sex). Since this matching strategy necessarily controls for case facts, parties and interveners in the cases, a difference of means analysis can be used to determine if female justices vote more liberally in the matched data set. If the differences between men and women were statistically significant, then gender effects would be clearly demonstrated in the union cases. If not, this strategy would lead us to reject Gilligan's different voice hypothesis in Canadian labour cases.

The third test for gender effects at the micro level examines the degree to which justices change their ideological voting behavior or, put another way, whether they assimilate to each other over time. We anticipated that attitudinal assimilation might occur gradually, with the women becoming attuned to the perspectives and voice that majority of male justices bring to economic cases. To test for this effect, we utilized the Baum (1988, 1992) correction technique, which compares the voting behavior of a justice with a cohort of justices who serve concurrently with them. The strength of this approach is that it allows one to detect ideological movement while simultaneously controlling for issue evolution over time. Thus, any movement by a justice in the direction of the cohort necessarily signals attitudinal assimilation toward the other members of the court. To test for such an acclimation effect, we examined the liberal voting behavior of male justices relative to female justices in all economic cases over two distinct time periods: years one and two of a woman's tenure on the court, and years five and six. We present a series of figures to examine the "gaps" that exist between male and female justices over these six-year time spans. One should note that if we find a consistent gap between male and female

justices over time, it would provide evidence that the female justices exhibit a consistent "different voice" and validate the feminist theory advanced by Gilligan. Such a finding would also reject any notion of attitudinal assimilation occurring on the court.

Results

Logistic Regression Model of Gender Effects

Our first methodological inquiry requires the use of logistic regression techniques because of the dichotomous nature of the dependent variable (1 = liberal vote, 0 = conservative, see Aldrich and Nelson 1984). The logistic model found in Table 2 does an impressive job of explaining the variance in liberal voting in union cases, predicting 71 percent of the justices' votes correctly, a 33 percent improvement over the modal guessing strategy. The table features model fit statistics that are highly significant, at or beyond the 99.9 percent confidence level. The R Square value reported in the results suggests that roughly 30 percent of the variance is explained by the 15 variables in the equation.

INSERT TABLE 2 HERE

Turning to the most important variable in our study, it is clear that female justices on the Canadian Court do vote more liberally than their male counterparts in union cases ($b = .40$, significant at the 95 percent confidence level). Indeed, female justices are 10 percent more likely to hand down a liberal vote for the economic underdog than their male counterparts, even when controlling for the ideological proclivities of the justices. This finding might be surprising given the absence of a gender effect on the Canadian Court at the aggregate economic level. One possible explanation for these disparate results is that gender differences, which are likely to emerge in specific legal issue areas, such as union cases, may simply fade into the background when searching for the impact of gender across a wider swath of cases. It is interesting to note that in these cases, gender has an impact that is substantially larger than either of the ideology variables used in the model, regardless of whether it is measured through party of prime minister or newspaper ideology. Most U.S. scholars would be surprised that ideology, arguably the most important predictor of voting behavior in the U.S. Supreme Court, did not prove statistically significant in the union model. However, it seems clear that gender plays a more important role in the resolution of union cases than the ideological stances of the justices, and this finding provides ammunition for Gilligan's argument that women bring a distinctive voice to their resolution of union disputes.

Seven of the twelve of the remaining variables that tap case characteristics, parties and interveners, and court control variables feature coefficients in the hypothesized direction and proved statistically significant in the model (see Table 2).⁸ The most important case characteristic for the justices is whether unions asserted a right to strike argument under the *Charter of Rights and Freedoms*, with the justices 28 percent less likely to agree with the unions' position, perhaps because they perceived union officials as trying to stretch Charter guarantees beyond what the framers intended ($b = -1.16$, significant at the 99 percent confidence level). Two other noteworthy factual circumstances in the model are cases featuring unfair labour practices and disputes over benefits and working conditions, with both triggering more liberal voting by the justices ($b = 1.27$ and 1.28 , both significant at the 99.9 percent confidence level).

Not surprisingly, justices are 26 and 27 percent more likely to side with workers in such circumstances than in situations when these issues are not central to the case. Another prominent characteristic in the model is whether a Labour Board issued a ruling in the case below. The data reveal that Canadian justices defer to the rulings of these boards, and are 27 percent more likely to cast a liberal vote when the labour board has ruled liberally, as opposed to cases where a conservative ruling was issued by the board. Although not all of the case characteristics were in the hypothesized direction, collectively, they all appear to provide powerful cues to the justices on how to resolve union disputes.

Both of the measures tapping parties and interveners, namely blue collar workers and the Canadian Labour Congress (CLC) feature coefficients that are statistically significant in the hypothesized direction ($b = .63$, significant at the 99 percent confidence level; $b = 2.27$, significant at the 99.9 percent confidence level, see Table 2). While justices are 15 percent more likely to side with blue-collar workers than their white-collar counterparts, they are 38 percent more likely to side with the union when the CLC has intervened on their behalf. This latter finding fits nicely with research by Brodie (2002) and Manfredi (2004) documenting the power of repeat players and the importance of groups that can mobilize resources in the Canadian legal system. What is noteworthy about the last two variables in the table, is that the Court has not become more liberal in union cases under the tutelage of Chief Justice McLachlin ($b = -.70$, significant at the 99 percent confidence level). Indeed, both the McLachlin and Lamer Court are 17 and 21 percent less likely to rule in favor of economic underdogs in union cases than the Dickson Court. This finding suggests that the Dickson Court tenure might have represented the high water mark of economic liberalism in union disputes. More importantly, the findings reveal that the mere presence of a female justice at the helm of the Court does not necessarily result in a liberal shift by the court as a whole in union cases, although female justices at an individual level do vote more liberally than their male counterparts.

Assessing Matched Ideological Pairs for Gender Effects

Table 3 provides aggregate voting results of ideologically similar male and female justices in union cases decided between 1984 and 2005. Given the fact that Canadian justices sit on different sized panels, matched ideological pairs varied from case to case, however, as mentioned earlier, individual justices tended to pair up with just a few regular colleagues. For example, since Justice McLachlin's newspaper ideology score was .667, she was most often paired with Justice Cory (.967), although she sometimes paired with Justice Binnie (.211) and Fish (1.105) as well. Justice L'Heureux-Dubé, who has an ideology score of 1.320, was most often paired with Justices Lamer (1.417), LaForest (1.500), and Bastarache (1.330). After matching the seven female justices serving on the Canadian Court between 1982 and 2005 with their ideologically similar male counterparts, we applied a difference of means test to assess the hypothesis that women would vote more liberally than men. Our findings reveal that women do vote more liberally than their ideologically matched counterparts in union cases. Indeed, women cast liberal votes in 63 percent of these cases, while their male colleagues voted liberally only 54 percent of the time (see Table 3). The 9 percent gender gap is statistically significant at the 95 percent confidence level, and further validates the gender difference found in the logistic regression model in Table 2. In short, both approaches provide impressive confirmation of the Gilligan hypothesis that women do speak in a different voice in union disputes, at least on the modern Canadian Supreme Court.

INSERT TABLE 3 HERE

Testing for Attitudinal Acclimation Over Time

The results from the third methodological examination at the micro level are found in Figure 2, and assess gender effects from a different perspective. At this stage, we inquire whether gender differences found in the first two models persist over time as Gilligan and attitudinal theorists would suggest, or whether attitudinal assimilation would emerge the longer male and female justices are exposed to each other's legal arguments and voting patterns. In other words, Figure 2 examines whether the attitudes of female justices toward economic cases would change after being exposed to the positions taken by their male colleagues on the bench, or vice versa, or not at all. The results found in Figure 2 depict the patterns of ideological agreement and change over time between the first four Canadian female justices and the cohort of male justices serving with them in their first two years on the bench and years five and six. Two caveats need to be mentioned here. Obviously Justices Deschamps, Abella, and Charron are excluded from this analysis because of the recency of their appointment to the Court. Second, the assessment of gender differences over time required an analysis of all economic cases decided by the justices in relevant years because there were not enough union cases to make sound judgments regarding ideological shifts among the justices. Third, we combined the voting patterns in years one and two and five and six in order to capture a larger number of votes and smooth out annual fluctuations, and selected the six-year time frame to capture the tenure of the largest number of justices on the bench. As a result, there are four scatterplots listed in Figure 2, with the time period denoted along the x-axis and the percentage of liberal votes depicted along the y-axis. Given the compressed nature of the judicial voting in economic cases on the Canadian Court, the y-axis of liberalism reflects a range of 30 to 90 percent in three of the four graphs and 10 to 70 percent in the fourth. The last graph is plotted on a 10 to 70 percent scale because it featured several justices who cast liberal votes below 30 percent of time, while none exceeded 70 percent.

A visual perusal of the four scatterplots allows a reader to assess the dynamic relationship between Justices Wilson, Arbour, L'Heureux-Dubé, and McLachlin and their male cohorts. Justice Arbour's graph provides the most intriguing result, at least in reference to the attitudinal assimilation hypothesis. Indeed, Justice Arbour seemed to move her ideological position in a more conservative direction across the first six years of her tenure, while three of the four male justices in her cohort moved in the liberal direction. One explanation for this shift is that perhaps Justice Arbour, who is a noted criminal law specialist, was much more willing to learn and defer to the expertise of economic specialists, like Justice Iacobucci. The fact that three of the four men move in the liberal direction is illustrative of issue evolution, rather than evidence of them assimilating towards her. Justice Arbour, then, fits the pattern of an initial maverick outsider who comes to conform to the median economic position in the last two years of her Court tenure. As such, her behavior comports with the theory of attitudinal assimilation by a justice.

INSERT FIGURE 2 HERE

The overarching pattern revealed in three of the four scatterplots is one of little to no ideological change between the liberal voting patterns of female justices in economic cases and

their male counterparts. Indeed, it is striking that the ideological gaps between the men and women found in Justices L'Heureux-Dubé and McLachlin's scatterplots remain stable over time. Although the liberal voting patterns decline in period two for all of the relevant justices, the male and female lines move in tandem with each other, validating Baum's (1988, 1992) contention that apparent ideological shifts over time are often attributable to issue evolution in economic cases and not ideological changes of heart among members of the Court. These two graphs provide no evidence to back up the hypothesis that justices will acclimate toward each other over time. Turning to the graph for Justice Wilson, we see that she and Justice Dickson were moving in a slightly more liberal direction than their other male counterparts. However, the fact that the lines on the graph are essentially flat suggests widespread ideological stability over the 1982-87 period in economic disputes. Once again, this does not provide any compelling evidence of attitudinal acclimation at work on the Canadian Court.

Conclusion

This study has examined sex and gender differences among Canadian Supreme Court justices at both the macro and micro levels of analysis, and there are several overarching conclusions that can be made. First, at the macro level, the addition of women to the Canadian Supreme Court has not increased rates of unanimity on the bench as it did in the U.S., although the Canadian results were in the anticipated direction. Ultimately, we believe that the arrival of female justices did not significantly alter aggregate patterns of consensus because the first three females appointed to the bench, most notably Justice L'Heureux-Dubé, were prolific dissenters. However, we believe this trend might be altered in subsequent years when the current cadre of female appointees have had sufficient time to make their mark on the court. Second, annual rates of liberalism across all economic cases did not turn up significant differences between male and female justices. Indeed, only a four percent gender gap appeared in the 1982-2005 period. Thus, from an aggregate perspective, Gilligan's hypothesis of a distinctive feminine voice did not seem to play out on the modern Canadian Supreme Court.

At the micro level of analysis sex differences were clearly evident in labour-management disputes, and the findings stand in stark contrast to the results at the aggregate level. Indeed, gender differences occurred when two distinct methodological techniques were utilized to assess the voting behavior of individual justices. Both the logistic regression analysis and the matching pairs approach yielded a nine percent, statistically significant gap in the voting behavior of male and female justices in union cases. Thus, when ideology and case facts are held constant, the female justices of the Canadian Court are more likely to hand down liberal rulings in favor of economic underdogs than their male counterparts. When we subsequently analyzed individual voting behavior in economic disputes over time, we found no evidence that justices from the opposite sex moved toward each other's ideological positions, with the possible exception of Justice Arbour. Indeed, the ideological voting patterns of most of the justices remained relatively stable over time. As a result, our third methodological inquiry indicates that the theoretical construct of attitudinal assimilation, borrowed from sociology and anthropology, does not provide a useful theoretical framework for understanding judicial behavior in this small group setting.

Ultimately, we are left with a set of results that seem somewhat counterintuitive. At the macro level, the introduction of women to the Canadian Supreme Court did not increase rates of unanimity on the Court, but at the micro level, women did exhibit distinctive voting behaviors

that validate Gilligan's different voice argument. One logical explanation for these disparate findings is rooted in the types of cases chosen for each level of analysis. Since all cases were analyzed when assessing rates of unanimity at the macro level, the large data set tends to wash out any substantive differences that might appear in specific issue areas, such as union-management cases. Having said this, we believe, as mentioned earlier, that given the significant impact women have had on unanimity in the U.S. Supreme Court, in time, a follow-up study may reveal a similar impact in the Canadian Supreme Court.

The results in the logistic model also present another noteworthy finding: that in the Canadian setting, unlike the U.S., indicators of judicial ideology do not have much predictive power for explaining liberal or conservative voting patterns in labour-management cases. Indeed, the effect of ideology is trumped by gender, along with a myriad of case-level characteristics, indicators tapping distinctive parties or interveners, and Court control variables. This finding may be surprising to U.S. court watchers, and highlights the importance of conducting comparative research in the field of public law, because it points to the fact that long-held beliefs about what factors influence judicial decision making in the U.S. setting may not drive individual voting behavior elsewhere. In Canada, we believe that the more nuanced appointment process for Supreme Court justices dampens the impact of ideological voting, and allows feminist cleavages to emerge as a salient factor influencing judicial voting behavior in union-management cases.

TABLE 1 -- Predicting Annual Rates of Unanimity in the Canadian Supreme Court, 1973-2005

Variable	b	Statistical significance
Percent Female Justices	.049	.386
Percent Justices Same Party	-.173	.070
Average Panel Size	-6.368	.000 ***
Number of Cases Argued	-.216	.010 **
Percent of Docket Charter	-.304	.013 *
Percent Unanimous Prior Year	.151	.130
Constant	139.609	
Number of Observations	32	
Adjusted R Square	.508	
F Test	6.330 ***	
Durbin Watson Statistic	2.316	

Figure 1

**Male & Female Voting Differences in the Canadian Supreme Court,
Economic Cases 1982-2005**

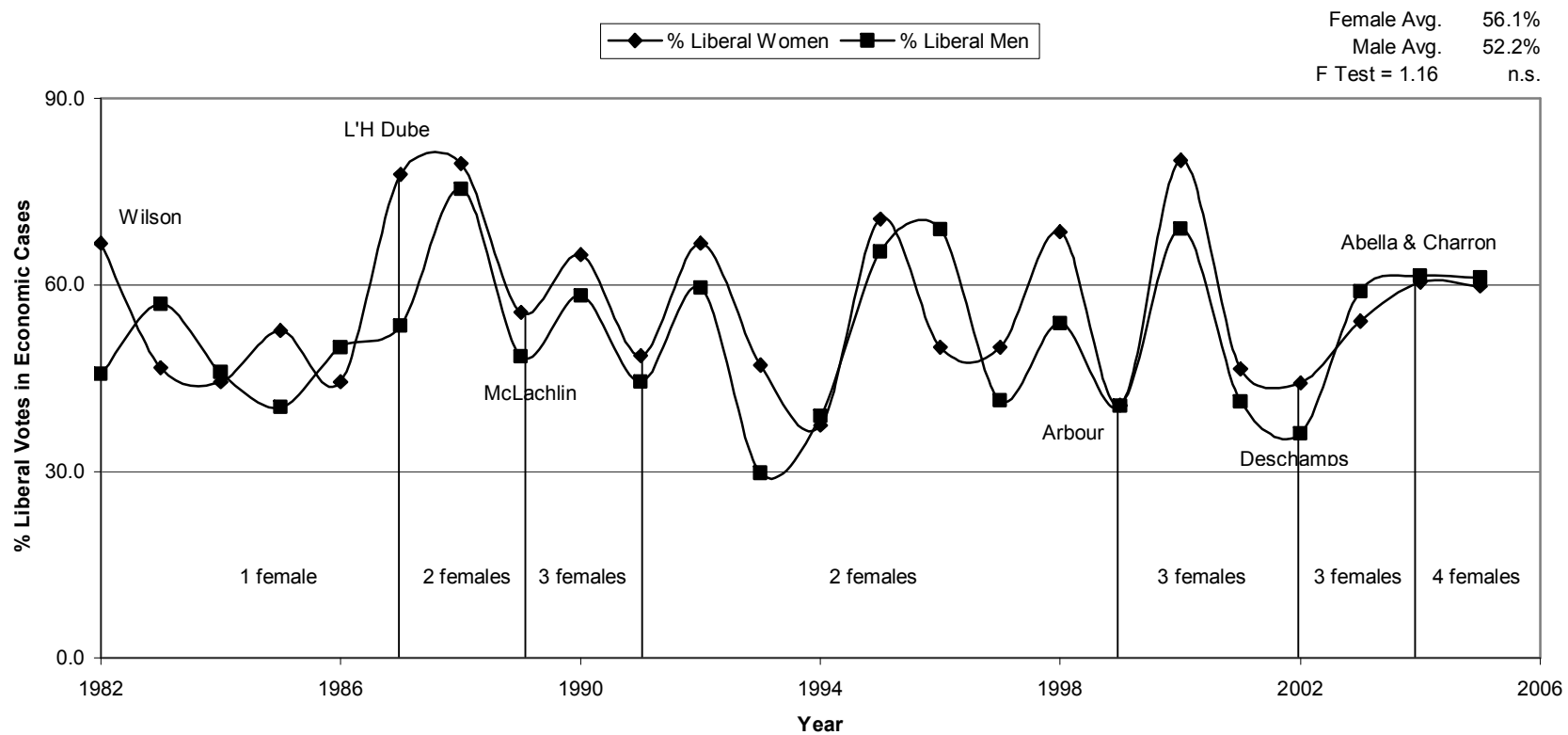


TABLE 2 -- Logistic Regression Estimates of Liberal Votes in Canadian Union Cases, 1984-2005

Variable	b	Standard Error	Change in Odds of a Liberal Vote When X is Low & High
Judge Level Variables			
Ideology	.024	.128	2.3%
Party of prime minister	.117	.112	5.6%
Female Justice	.402	.234 *	9.5%
Case Characteristics			
Unfair labour practices	1.271	.320 ***	26.4%
Benefits & conditions	1.275	.259 ***	27.3%
Discrimination claim	.734	.279 **	16.6%
Right to Strike	-1.155	.478 **	-28.0%
Strike/Lockout	-.468	.285 *	-11.5%
Wrongful Dismissal	-.852	.224 ***	-20.8%
Contract out/non-union	-.469	.275 *	-11.5%
Liberal Labour Board	.551	.152 ***	26.7%
Parties & Intervenors			
Blue collar workers	.631	.211 **	15.3%
Canadian Labour Congress	2.267	.403 ***	38.3%
Court Control Variables			
Lamer Court	-.842	.260 ***	-20.5%
McLachlin Court	-.696	.269 **	-17.0%

**TABLE 2 Continued -- Logistic Regression Estimates of Liberal Votes in
Canadian Union Cases, 1984-2005**

Variable	b	Standard Error	Change in Odds Of a Liberal Vote When X is Low & High
Constant & Model Fit Data			
Constant	-.138		
-2 LLR Chi Square	704.128	***	
Nagelkerke R Square	.305		
Percent Correct	71.3%		
Reduction in Error	33.3%		
Number of Votes	635		

* significant at $p < .05$; ** significant at $p < .01$; *** significant at $p < .001$

**TABLE 3 -- Cross Tabulation of Matched Ideological Pairs of Male and Female Justices
in Canadian Union Cases, 1984-2005**

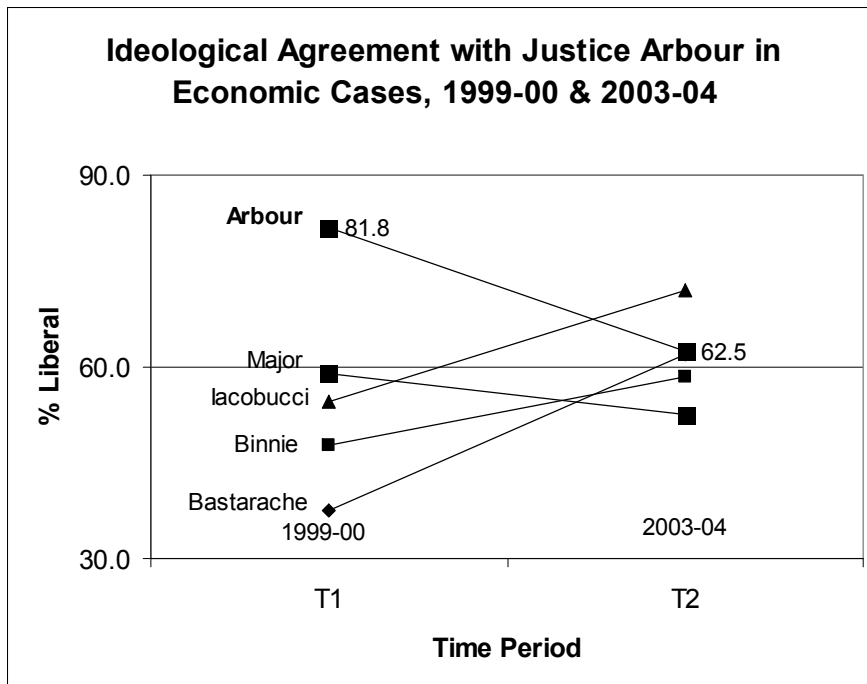
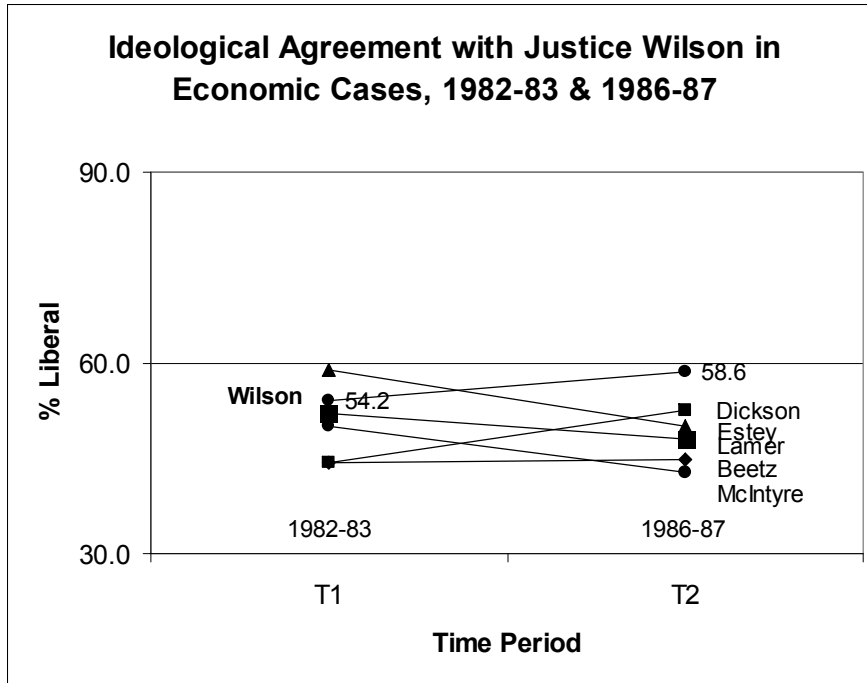
Sex of Justice	% Conservative	% Liberal	Total
Male	45.7 (80)	54.3 (95)	100.0 (175)
Female	36.6 (64)	63.4 (111)	100.0 (175)
Total	41.1 (144)	58.9 (206)	100.0 (350)

Chi Square = 3.02

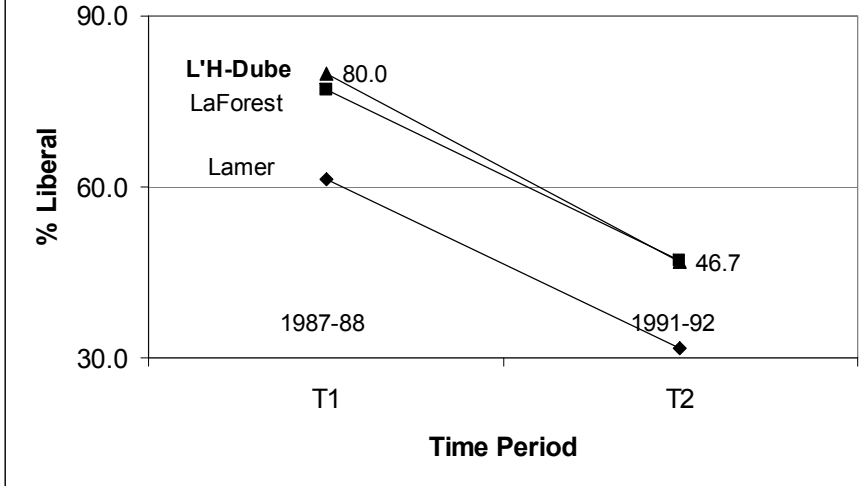
Statistical significance = .041

Lambda = .05

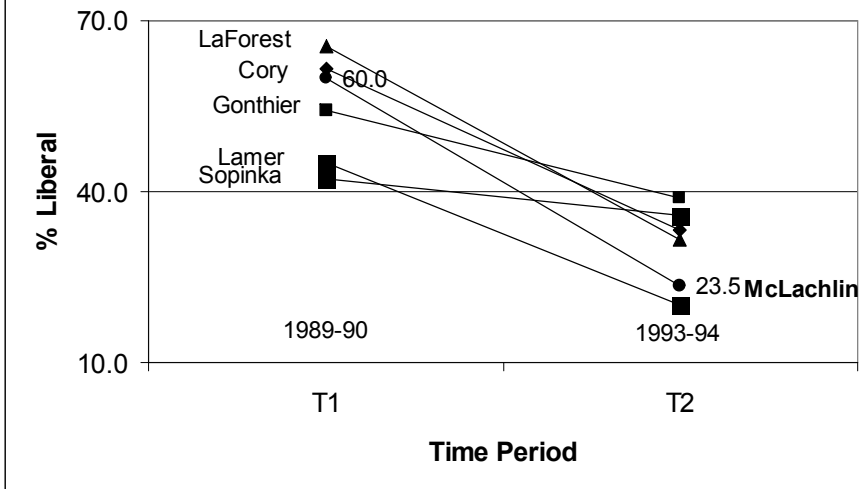
Figure 2



**Ideological Agreement with Justice
L'Heureux-Dube in Economic Cases, 1987-88
& 1991-92**



**Ideological Agreement with Justice
McLachlin in Economic Cases, 1989-90 &
1993-94**



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Notes

¹ Gilligan's hypothesis has garnered support from at least one female justice of the Canadian Supreme Court. Writing in 1990, Justice Bertha Wilson indicated "there is merit in Gilligan's analysis" about a different feminine voice, although she acknowledged that it would not apply across all legal fields (Wilson 1990, 149-51, in Morton 2002).

² The rates of unanimity were tabulated from orally argued cases featuring written opinions as published in the Supreme Court Reports. Omitted from the analysis were oral judgments without any formal written opinion. One should note that Justice Laskin did not get elevated to the position of chief justice until December of 1973. Thus, the data set also captures the last year of the Fauteux Court in Canada.

³ We did find autocorrelation in the time series, but controlled for that by introducing a lagged indicator of the dependent variable in the model (see Ostrom 1978).

⁴ Epstein et al. (1996, 93) report that the rate of unanimity across all U.S. cases across 1975 and 1994 is 38 percent, while Ostberg and Wetstein (2007, 116) report a 76 percent unanimity rate on the Canadian Court between 1984 and 2003.

⁵ Groupthink is a term drawn from the social-psychological literature, and has been most readily applied in the field of presidential studies in political science. Irving Janis (1982) argued that leaders can fall victim to the tendency to only accept positive feedback from a cohesive bloc of like-minded advisers, leading them to reject ideas from advisers who might challenge group norms or policy preferences. In such a scenario, critics are deemed "outsiders" and are seen as "enemies," of the group consensus about a preferred policy position. In a similar vein, our data suggests that when new justices join the Canadian court, there may be a temporary gender-based groupthink effect at work, with men tending to group together in a more cohesive bloc juxtaposed to the females on the bench.

⁶ The description of variables and hypotheses for the union cases draws from our earlier work in Ostberg and Wetstein (2007, 166-69).

⁷ The logic of this approach is outlined in Boyd et al.'s (2007) analysis of U.S. Appellate Court voting in discrimination cases.

⁸ The four variables featuring coefficients in the unexpected direction are strike/lockout ($b = -.47$), wrongful dismissal ($b = -.85$), contract out ($b = -.47$), and McLachlin Court ($-.70$). Since we did not hypothesize a particular direction for the Lamer Court variable, we did not include it among the list of variables returning coefficients in the expected direction ($b = -.84$).