

#### **4 Linking Socio-demographic Characteristics of Tax Court of Canada Judges to their Decisions**

In Section 3, the exploratory data analysis has shown that Supreme Court of Canada justices decided cases differently partly because of their different socio-background characteristics. Section 4 is an application of the modeling approach in Section 3 to explore judicial behaviour of Tax Court of Canada judges in income tax cases in 1983-2004.

Unlike the Supreme Court of Canada, Tax Court of Canada mainly hears tax cases, and its role in the justice system in Canada is not as well known as the Supreme Court of Canada. Established in 1983<sup>192</sup> and given exclusive original jurisdiction over income tax appeals filed on or after January 1, 1991,<sup>193</sup> the Tax Court of Canada has the responsibility to adjudicate a wide range of disputes affecting all Canadians including income tax, G.S.T., Canada Pension Plan, employment insurance, and other matters. Judge David Beaubier of the Court said “if you pay a cheque to the federal government [concerning these matters] ... the Tax Court of Canada has jurisdiction over that matter .... Therefore, the Tax Court of Canada has jurisdiction over approximately 50% of the Gross

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<sup>192</sup> *Tax Court of Canada Act*, R.S.C 1985 c.T-2, as amended.

<sup>193</sup> For an analysis of the 1991 change, see J.E. Fulcher, "Is the "New" Tax Court of Canada Absolutely Bound by Decisions of the Federal Court – Trial Division?" (1992) 40 *Canadian Tax Journal* 99. In 2003, the court was made a superior court of record, i.e. it was given powers such as witness examination of a superior court. For a history of the Tax Court of Canada provided by the Court, see [http://www.tcc-cci.gc.ca/main\\_e.htm](http://www.tcc-cci.gc.ca/main_e.htm).

Domestic Product of Canada.”<sup>194</sup> In describing the wide range of cases heard by the Court, Alban Garon, then Chief Justice of the Tax Court of Canada, said in 2003 that the Court “hears every type of appeal, from high-stakes rollovers by large Toronto-, Montreal-, or Vancouver-based corporations, to employment insurance claims by fishermen in Newfoundland, to claims by injured workers in Manitoba for the disability tax credit. The court also decides issues relating to social policy, such as the Canada child tax benefit.”<sup>195</sup> As “one of the priorities for the Tax Court of Canada is that it be accessible to all Canadians,”<sup>196</sup> Garon said the Tax Court of Canada hears the cases in all kinds of places in 68 Canadian cities.<sup>197</sup> To be sure, he said “[t]he court has even sat in a taxpayer’s kitchen when the taxpayer could not otherwise attend the hearing.”<sup>198</sup>

The importance of the Tax Court of Canada isn’t lost on tax scholars. For example, Brian Arnold asked rhetorically: “Can you imagine what life would be like without a forum for ordinary people, employees, the divorced, the disabled, and even,

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<sup>194</sup> The Honourable David W. Beaubier, "DOs and DON'Ts in Tax Court," 2000 Prairie Provinces Tax Conference, (Toronto: Canadian Tax Foundation, 2000), 1. In illustrating the reach of the Court, Judge Beaubier said that the Court also has jurisdiction over the Harmonized Sales Tax imposed in Nova Scotia, New Brunswick and Newfoundland and Labrador. The Court hears two types of cases: cases under the General Procedure and the Informal Procedure. Beaubier said, “At present 50% of the income tax cases heard by the Court are under the General Procedure and 50% are under the Informal Procedure. This is because of the Informal Procedure maximum limit of \$12,000 of federal tax in an appeal. (See Section 18.1, Tax Court of Canada Act).” See p. 6.

<sup>195</sup> “Tax Court of Canada 20th Anniversary Symposium” (2005) 53 Canadian Tax Journal 135 at 138.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

occasionally, the desperate and the delusional to have their day in court to challenge the sometimes arbitrary decisions of a huge government bureaucracy?”<sup>199</sup> He answered emphatically: “If the Tax Court did not exist, we would have to invent it.”<sup>200</sup>

Such an important burden of adjudication falls on the shoulders of the Tax Court of Canada judges, who currently comprise Chief Justice Donald Bowman, 20 other judges plus five supernumerary judges.<sup>201</sup> The position of Associate Chief Justice is vacant at the time of writing. Asked in 2002 about the importance of the role of Tax Court of Canada judges in judging tax cases, Bowman, then Associate Chief Justice of the Court, underscored the “crucial importance”<sup>202</sup> of the role played by these judges in judicial decision making of tax cases in the following way: “Cases can be decided one way by one judge and quite differently by another; I can probably predict how a case is going to go, depending upon who the judge ... hears it.”<sup>203</sup>

To add to the understanding of decision making of Tax Court of Canada judges, this section explores the influences of socio-demographic characteristics of Tax Court of

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<sup>199</sup> *Ibid.* at 140.

<sup>200</sup> *Ibid.*

<sup>201</sup> The Tax Court of Canada said that these judges are judges who elected to hold part-time judicial duties according to s. 10 of the *Tax Court of Canada Act*, *supra* note 192, See [http://www.tcc-cci.gc.ca/judges/current\\_judges\\_e.htm#super](http://www.tcc-cci.gc.ca/judges/current_judges_e.htm#super).

<sup>202</sup> The Honourable Donald George Hugh Bowman, Ian MacGregor, QC, Al Meghji, The Honourable Karen R. Sharlow, Elaine S. Sibson, FCA, Joanne E. Swystun, "Tax Tales: A Conversation with Judger and Counsel," Report of Proceedings of Fifty-Fourth Tax Conference, 2002 Tax Conference (Toronto: Canadian Tax Foundation, 2003), 8-9.

<sup>203</sup> *Ibid.*

Canada judges on their income tax decisions from 1983 through early 2004. The exploratory data analysis approach used in this section is an extension of the approach used in Section 3, and the differences between the two approaches are highlighted in appropriate juncture of the following presentation.

The rest of Section 4 proceeds as follows. Section 4.1 describes briefly the data used for analysis. Section 4.2 outlines specific questions that are set in light of the literature review and the available data and presents the results of the data analysis. Section 4.3 presents simulated voting patterns of current Tax Court of Canada judges based on the results of data analysis in Section 4.2.

#### **4.1 An Initial Look at the Data Available for Analysis of Judicial Decision Making in Tax Court of Canada Income Tax Cases**

The dataset used for the exploratory data analysis in this section contains 3,867 votes cast by 34 judges in 1983-2004 and 13 sets of socio-demographic characteristics of the judges. Unlike the Supreme Court of Canada merged dataset, no control variables such as Prior Taxpayer Win and Post-*Charter* Era are used. The Prior Taxpayer Win variable is not applicable as Tax Court of Canada was the first court that heard income tax cases in the study period. The Post-*Charter* era variable is unnecessary as the first case Tax Court of Canada decided was in 1983, after the enactment of the *Charter*. Section 4.1.1 presents the data on the voting records of the judges first, followed by the data on the socio-demographic characteristics of the judges in Section 4.1.2.

### 4.1.1 Votes Cast by Tax Court of Canada Judges

The Tax Court of Canada judges voted more often against taxpayers than for taxpayers in the study period 1983-2004. Among the votes cast, 30% or 1,152 votes were cast for taxpayers, but 53% or 2,043 were cast against taxpayers, while 17% or 672 were cast partially for taxpayers and partially against taxpayers.

Unlike in the Supreme Court of Canada exploratory study, the votes in this dataset are coded in three instead of two categories. In the Supreme Court of Canada dataset, the votes are coded as either for taxpayer (1) or against taxpayer (0). In the Tax Court of Canada dataset, the in-between category is introduced. The votes are coded as for taxpayer (1), against taxpayer (0) and partially for taxpayer/partially against taxpayer (2). The coding leads to the use of multinomial logistic regression rather than probit regression as the analytical tool.<sup>204</sup>

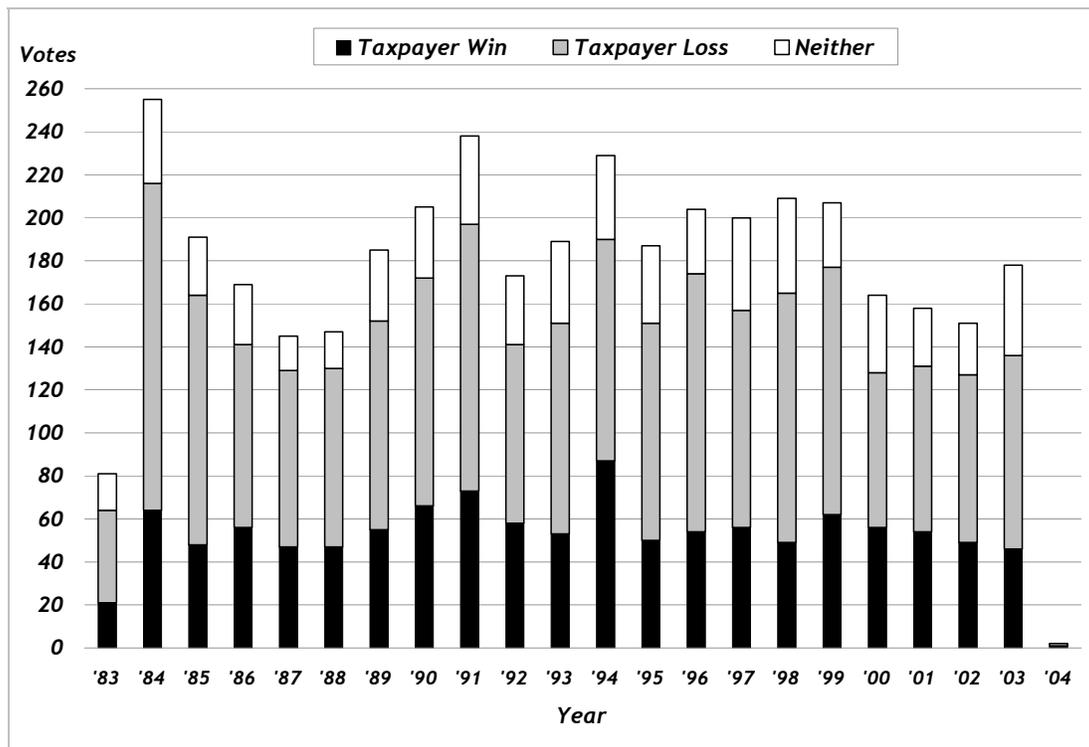
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<sup>204</sup> Multinomial logistic regression, like other multiple regressions, allows the testing of the power to explain a dependent variable by an independent variable while holding all other independent variables constant. Unlike probit or logit regression, multinomial logistic regression examines categorical dependent variable with more than two categories. The mlogit procedure in Stata 8 is used with the cluster option for the analyses. The mlogit procedure produces multinomial logistic regression for categorical dependent variable with more than two categories, while the cluster option in a way identifies the voting records by each judge while generating robust standard errors. The use of the cluster option is to account for the fact that each judge voted more than once over a number of years and thus each judge's votes cast over time are assumed not to be independent. As a check, an OLS was run on Stata 8 using the following scale as the dependent variable: for taxpayers (3), partially for and partially against taxpayers (2) and against taxpayers (1). Some results on some variables are similar to the mlogit outputs under Stata 8, while others are different. Although the mlogit is a lot more difficult to interpret, it provides more nuances than the OLS in

#### 4.1.1.1 Votes Cast by Tax Court of Judges Per Year

Analyzing the voting records by years reveals that the voting percentages of an average year can be seen as an adequate representation of the study period because the average, median and mode are very similar. Figure 31 shows the votes cast by the judges by year, illustrating that votes against taxpayers outnumbered votes for taxpayers in all years.

Figure 31: Votes Cast by Tax Court of Canada Judges, 1983-2004



In 1983-2004, votes for taxpayers averaged 31% per year. The median was 30%,

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this case. See Appendix II for the mlogit outputs.

while the mode was 32%, as recorded in 1987, 1988, 1990 and 2002. Other than in 2004, when only two votes/cases were included in this dataset, the number of votes cast for taxpayers range from a high of 38% or 87 of 229 votes in 1994 to a low of 23% or 49 of 209 votes in 1998.

In the study period, votes against taxpayers averaged 53% per year. The median was 52%, while the mode was 52%, as recorded in 1989, 1990, 1991, 1993 and 2002. In the study period, the number of votes cast against taxpayers range from a high of 61% or 116 of 191 votes in 1985 to a low of 44% or 72 of 164 votes in 2000.

In the same study period, votes partially for and against taxpayers averaged 17% per year. The median was 17%, while the mode was 17%, as recorded in 1986, 1991, 1994 and 2001. Other than in 2004, the number of votes cast partially for and against taxpayers range from a high of 24% or 42 of 178 votes in 2003 to a low of 11% or 16 of 145 votes in 1987.

#### **4.1.1.2 Votes Cast by Individual Tax Court of Canada Judges**

On average, a Tax Court of Canada judge cast 114 votes in the study period 1983-2004. The median was 94 votes. Among the 34 judges, the number of votes per judge range from a high of 266 cast by Tardif (appointed to Tax Court of Canada in 1994) and a low of 7 by Angers (appointed in 2001). In the study period, an average Tax Court of Canada judge voted 30% of the time for taxpayers but 53% of the time against taxpayers. The average judge voted 17% of the time partially for taxpayers and partially against

taxpayers. Figure 32 shows the voting records of individual judges.

**Figure 32: Votes Cast by Each of the 34 Tax Court of Canada Judges, 1983-2004**

<i>Judges</i>	<i>Taxpayer Win</i>		<i>Taxpayer Loss</i>		<i>Neither</i>		<i>Total</i>
<i>Angers</i>	1	14%	5	71%	1	14%	7
<i>Archambault</i>	17	18%	46	49%	30	32%	93
<i>Beaubier</i>	51	29%	88	49%	39	22%	178
<i>Bell</i>	57	53%	34	31%	17	16%	108
<i>Bonner</i>	31	16%	144	72%	25	13%	200
<i>Bowie</i>	19	25%	40	53%	16	21%	75
<i>Bowman</i>	89	42%	82	38%	42	20%	213
<i>Brulé</i>	69	36%	89	47%	32	17%	190
<i>Campbell</i>	6	40%	8	53%	1	7%	15
<i>Cardin</i>	11	20%	36	64%	9	16%	56
<i>Christie</i>	38	21%	125	69%	17	9%	180
<i>Couture</i>	29	34%	44	52%	12	14%	85
<i>Dussault</i>	25	24%	61	58%	19	18%	105
<i>Garon</i>	35	35%	40	40%	25	25%	100
<i>Goetz</i>	21	28%	48	64%	6	8%	75
<i>Hamlyn</i>	33	37%	43	48%	14	16%	90
<i>Hershfield</i>	10	53%	8	42%	1	5%	19
<i>Kempo</i>	41	39%	37	36%	26	25%	104
<i>Lamarre</i>	26	33%	43	55%	9	12%	78
<i>Lamarre Proulx</i>	52	25%	116	56%	41	20%	209
<i>Little</i>	2	13%	10	67%	3	20%	15
<i>Margeson</i>	15	22%	38	55%	16	23%	69
<i>McArthur</i>	32	28%	65	57%	17	15%	114
<i>Miller</i>	11	44%	9	36%	5	20%	25
<i>Mogan</i>	52	28%	98	53%	36	19%	186
<i>O'Connor</i>	42	45%	34	37%	17	18%	93
<i>Rip</i>	70	29%	124	51%	47	20%	241
<i>Sarchuk</i>	30	15%	135	69%	32	16%	197
<i>Sobier</i>	26	33%	42	54%	10	13%	78
<i>St.-Onge</i>	7	18%	27	68%	6	15%	40
<i>Tardif</i>	15	31%	27	55%	7	14%	49
<i>Taylor</i>	82	31%	142	53%	42	16%	266
<i>Teskey</i>	29	31%	55	58%	11	12%	95
<i>Tremblay</i>	78	36%	100	46%	41	19%	219
<b>Total</b>	<b>1,152</b>	<b>30%</b>	<b>2,043</b>	<b>53%</b>	<b>672</b>	<b>17%</b>	<b>3,867</b>

The voting percentage for taxpayers range from a high of 53% or 57 of 108 votes

cast by Bell (appointed in 1991) and 53% or 10 of 19 votes cast by Hershfield (appointed in 2000) to a low of 13% or 2 of 15 votes cast by Little (appointed in 2002). Voting percentages against taxpayers range from a high of 72% or 144 of 200 votes cast by Bonner (appointed in 1983) and to a low of 31% or 34 of 108 votes cast by Bell. Only six of 34 judges voted for taxpayers more often than against taxpayers. The voting records of the six judges – Bell, Bowman, Hershfield, Kempo, Miller and O'Connor – are shaded in grey. Actually, the gap between their voting percentages for taxpayers and voting percentages against taxpayers are very narrow, except for those of Bell and Hershfield.

#### **4.1.2 Socio-demographic Characteristics of Tax Court of Canada Judges**

The dataset contains 13 sets of socio-demographic characteristics of Tax Court of Canada judges. As shown in Figure 33, they are (1) the justices' **Political Ties**; (2) their **Regional Ties**; (3) their **Prior Judicial Experience**; (4) their **Prior Law Teaching Experience**; (5) their **Entrepreneurial Experience**; and (6) their **International Education**; (7) the **Gender** of the judges; (8) **Social Networking**; (9) their number of years on the Tax Court of Canada when cases were decided – **Tenure**; (10) their **Government Law Practice Experience**; (11) the number of years as a government lawyer – **Years in Government Law Practice**; (12) their **Private Law Practice Experience**; and (13) the number of years as a lawyer outside government – **Years in Private Law Practice**. Figure 33 lists the variables.

Figure 33: Socio-demographic Characteristics of Tax Court of Canada Judges, 1983-2004

Socio-demographic Characteristics	Coding Scheme	Distribution of Votes
<b>Political Ties</b>	<ul style="list-style-type: none"> <li>▪ Appointed by Liberal Party prime minister = 1; otherwise = 0</li> </ul>	53%; 47%
<b>Regional Ties</b>	<ul style="list-style-type: none"> <li>▪ Worked in Ontario = 1; otherwise = 0</li> </ul>	57%; 43%
	<ul style="list-style-type: none"> <li>▪ Worked outside Ontario and Quebec = 1; otherwise = 0</li> </ul>	21%; 79%
<b>Prior Judicial Experience</b>	<ul style="list-style-type: none"> <li>▪ Was a judge before = 1; otherwise = 0</li> </ul>	5%; 95%
<b>Prior Law Teaching Experience</b>	<ul style="list-style-type: none"> <li>▪ Taught law on a full-time basis = 1; otherwise = 0</li> </ul>	3%; 97%
	<ul style="list-style-type: none"> <li>▪ Taught law on a part-time basis = 1; otherwise = 0</li> </ul>	24%; 76%
<b>Entrepreneurial Experience</b>	<ul style="list-style-type: none"> <li>▪ Helped founded a law firm = 1; otherwise = 0</li> </ul>	21%; 79%
<b>International Education</b>	<ul style="list-style-type: none"> <li>▪ Went to university in the U.S. = 1; otherwise = 0</li> </ul>	10%; 90%
	<ul style="list-style-type: none"> <li>▪ Went to university outside Canada and U.S. = 1; otherwise = 0</li> </ul>	4%; 96%
<b>Gender</b>	<ul style="list-style-type: none"> <li>▪ Female = 1; male = 0</li> </ul>	8%; 92%
<b>Social Networking</b>	<ul style="list-style-type: none"> <li>▪ Was active in social networking; otherwise = 0</li> </ul>	35%; 65%
<b>Tenure</b>	<ul style="list-style-type: none"> <li>▪ Number of years as a Tax Court of Canada judge when decision rendered – from less than a year to 34 years</li> </ul>	See Figure 42 below.
<b>Government Law Practice Experience</b>	<ul style="list-style-type: none"> <li>▪ Practiced law in government = 1; otherwise = 0</li> </ul>	61%; 39%
<b>Years in Government Law Practice</b>	<ul style="list-style-type: none"> <li>▪ The number of years as a government lawyer</li> </ul>	See Figure 44 below.
<b>Private Law Practice Experience</b>	<ul style="list-style-type: none"> <li>▪ Practiced law in government = 1; otherwise = 0</li> </ul>	84%; 16%
<b>Years in Private Law Practice</b>	<ul style="list-style-type: none"> <li>▪ The number of years as a lawyer outside government</li> </ul>	See Figure 46 below.

The first six socio-demographic variables are similar to those used in the Supreme Court of Canada exploratory data analysis, but there are some nuanced differences. The remaining seven socio-demographic variables are variables that were not examined in the Supreme Court of Canada exploratory data analysis. Section 4.2 below presents the results of the analysis of the influences of the 13 socio-demographic characteristics of Tax Court of Canada judges on their decision making in income tax cases.

#### **4.2 Exploratory Data Analysis of Judicial Decision Making of Tax Court of Canada Income Tax Cases**

In exploring the voting records of the Tax Court of Canada judges, 13 questions are formulated to explore the relationships between the votes cast by the judges and their socio-demographic characteristics in multinomial logistic regression analysis.<sup>205</sup> Like in the Supreme Court of Canada exploratory study, the dependent variable is the votes cast by the judges. The independent variables are the socio-demographic characteristics. The objective is to determine whether a judge who has a certain socio-demographic characteristic is more likely to vote in a particular way, holding all other variables constant.

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<sup>205</sup> The multinomial regression results are presented in the form of odd ratios. Only results that are at a five-percent significant level are reported. The multinomial logistic regression model used here meets the assumption of independence of irrelevant alternatives (IIA). See Appendix III for the mlogit model generated by Stata 8.

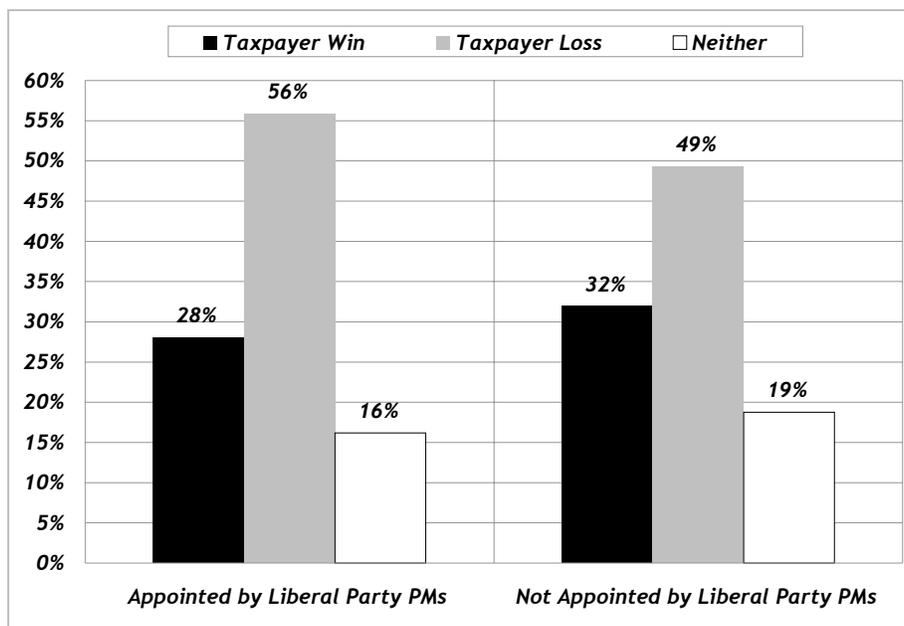
### 4.2.1 Political Ties

In examining the Political Ties variable, the question is whether Tax Court of Canada judges who were appointed by Liberal Party prime ministers are more likely to vote for taxpayers than other judges, holding all other variables constant. Like in the Supreme Court of Canada exploratory study, the Political Ties variable represents whether the judges were appointed by Liberal Party prime ministers.

Unlike in the Supreme Court of Canada exploratory data analysis, the Political Ties variable is not broken down by votes cast by judges appointed by different prime ministers because most of the judges were appointed by either Prime Minister Brian Mulroney of the Progressive Conservative Party (September 17, 1984 – June 25, 1993) or Prime Minister Jean Chrétien of the Liberal Party (Nov. 4, 1993 to Dec. 12, 2003). A total of 15 judges were appointed by Mulroney, while 8 were appointed by Chrétien. Among the remaining 11 judges, 3 were appointed by Pierre Trudeau (Liberal Party) in his first term from April 20, 1968 to June 3, 1979, while 6 were appointed by Trudeau in his second term from March 3, 1980 to June 30, 1984. John Diefenbaker (Progressive Conservatives; June 21, 1957 – April 22, 1963) and Lester Pearson (Liberal Party; April 22, 1963 – April 20, 1968) each appointed one judge. Judges appointed before 1983 were appointed to the Tax Appeal Board and the Tax Review Board. The Tax Appeal Board was started as the Income Tax Appeal Board in 1946, and it was renamed the Tax Appeal Board in 1958. The Board was subsequently transformed into the Tax Review Board in 1970 before the Tax Court of Canada came into being in 1983. As shown in the

discussion on coding above, 18 of the 34 judges were appointed by Liberal Party prime ministers. Figure 34 shows the voting records of the judges divided by their political ties, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and their political ties did not occur by chance.<sup>206</sup>

**Figure 34: Voting Percentages of Tax Court of Canada Judges and Political Ties, 1983-2004**



The multivariate analysis suggests that Tax Court of Canada judges appointed by Liberal Party prime ministers are more likely to vote against taxpayers than other judges,

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<sup>206</sup> The difference between the voting records of the two categories of judges is statistical significant at a five-percent level. The grouping of judges by political parties aims to explore the idea as established by work by other researchers that the political party that appointed judges could be used as an explanatory variable of judicial decision making.

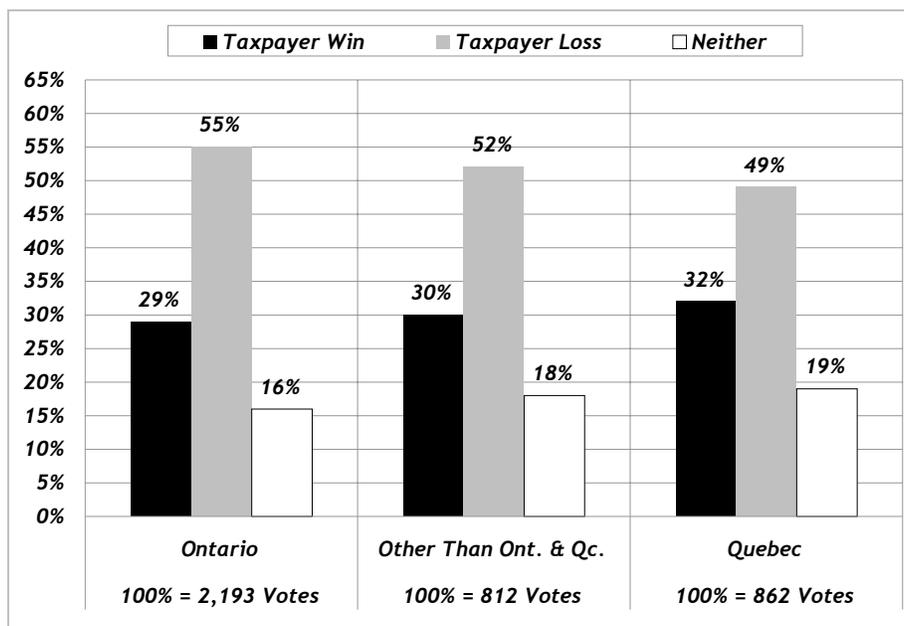
holding all other variables constant. According to the multinomial logistic regression analysis of Tax Court of Canada judges' voting records, the odds of voting against taxpayers relative to voting for taxpayers are 1.5 times greater for judges appointed by Liberal Party prime ministers than other judges, holding all other variables constant. The odds of voting against taxpayers relative to voting partially for taxpayers and partially against taxpayers are 1.7 times greater for judges appointed by Liberal Party prime ministers than other judges, holding all other variables constant. The finding offers a different look at the behavior of the political ties variable in the Supreme Court of Canada exploratory study, which finds that judges appointments by Liberal Party prime ministers do not necessarily mean that the judges are more likely to vote for taxpayers than other justices, holding all other variables constant. As the Tax Court of Canada heard a lot more cases than the Supreme Court of Canada, and the two different courts heard different cases most of the time, more research is needed to flesh out the explanatory power of the political ties variable of judicial decision making.

#### **4.2.2 Regional Ties**

In examining the Regional Ties variable, the question is whether Tax Court of Canada judges who built their careers in Ontario or areas other than Ontario and Quebec are more likely to vote for taxpayers than judges who built their careers in Quebec, holding all other variables constant. The Regional Ties variable is broken down in the same way as in the Supreme Court of Canada analysis in Section 3 – Ontario, Quebec as

well as areas other than Ontario and Quebec. Among the 34 Tax Court of Canada judges, 14 built their careers in Ontario, 11 built their careers in areas other than Ontario and Quebec, while nine built their careers in Quebec. Figure 35 shows the voting records of the judges divided by their regional ties, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and their regional ties occurred by chance.<sup>207</sup>

**Figure 35: Voting Percentages of Tax Court of Canada Judges and Regional Ties, 1983-2004**



The multivariate analysis suggests that Tax Court of Canada judges who built

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<sup>207</sup> The difference between the voting records of the three categories of judges is not statistically significant at a five-percent level.

their careers in Ontario or areas other than Ontario and Quebec are neither more or less likely to vote for taxpayers than judges who built their careers in Quebec, holding all other variables constant. According to the multinomial logistic regression analysis, Tax Court of Canada judges' voting records does not find Regional Ties influential in judicial decision making in the Court.<sup>208</sup> In comparison, the Supreme Court of Canada exploratory study found that judges who built their careers in Quebec are more likely to vote against taxpayers than other judges, holding all other variables constant.

#### **4.2.3 Prior Judicial Experience**

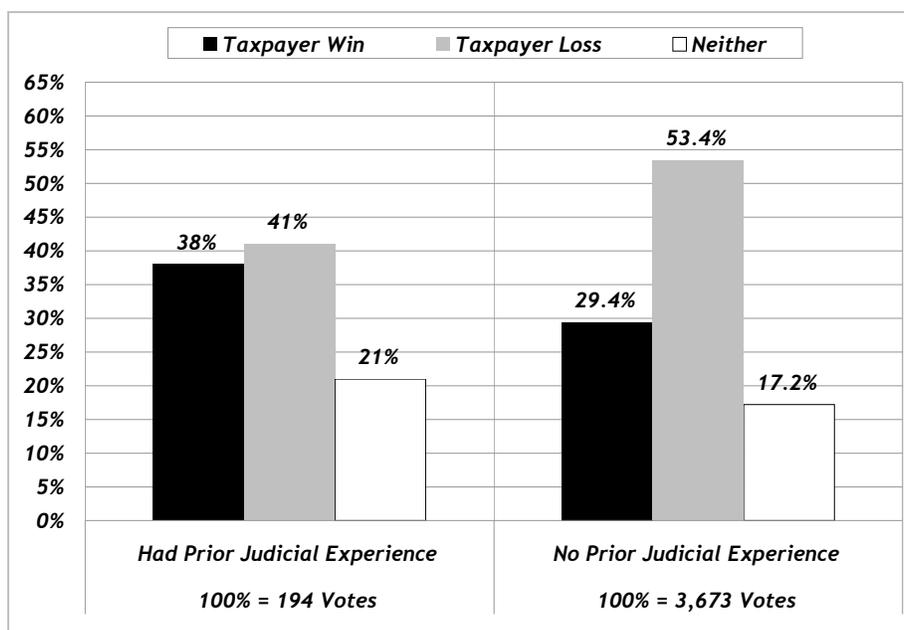
In examining the Prior Judicial Experience variable, the question is whether Tax Court of Canada judges who had prior judicial experience are more likely to vote for taxpayers than other judges, holding all other variables constant. As not many Tax Court of Canada judges had judicial experience prior to their appointment to the Court, the Prior Judicial Experience variable is not broken down into three sub-categories like in the Supreme Court of Canada exploratory study – trial court experience, appellate court experience and no prior judicial experience. Among the 34 Tax Court of Canada judges, only Kempo and Hamlyn had prior judicial experience. Figure 36 shows the voting records of the judges divided by whether they had prior judicial experience, illustrating

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<sup>208</sup> The multinomial regression results of the Regional Ties variable are not statistically significant at a five-percent level.

that the bivariate relationship between votes cast by Tax Court of Canada judges and Prior Judicial Experience did not occur by chance.<sup>209</sup>

**Figure 36: Voting Percentages of Tax Court of Canada Judges and Prior Judicial Experience, 1983-2004**



The multivariate analysis suggests that Tax Court of Canada judges who had prior judicial experience are more likely to vote for taxpayers than other judges, holding all other variables constant. According to the multinomial logistic regression analysis, the odds of voting for taxpayers relative to voting against taxpayers are two times greater for judges who had prior judicial experience than other judges, holding all other variables

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<sup>209</sup> The difference between the voting records of the two categories of judges is statistically significant at a five-percent level.

constant. That is different from the finding of the Supreme Court of Canada exploratory study that judges who were trial judges before are more likely to vote against taxpayers than other judges, holding all other variables constant.

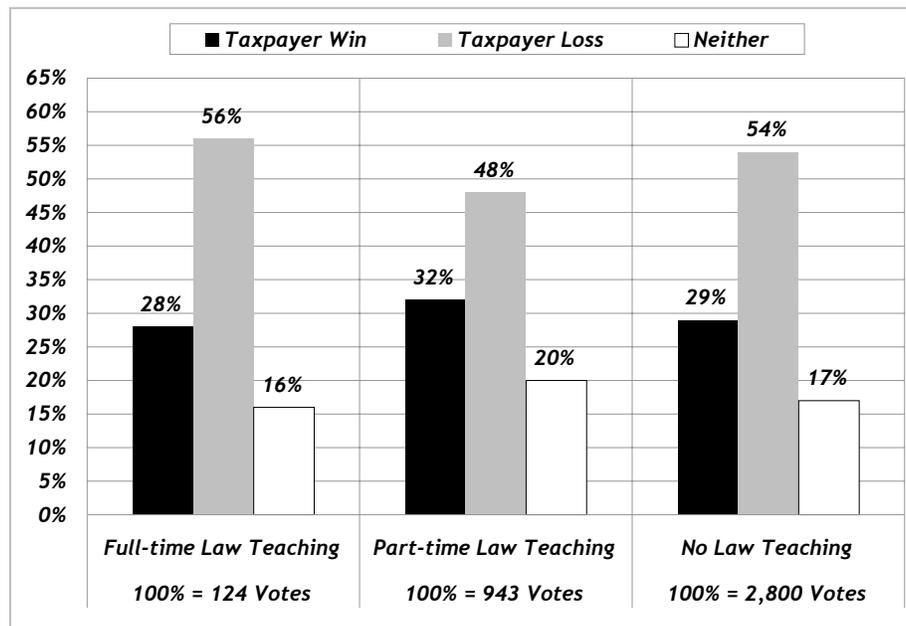
#### **4.2.4 Prior Law Teaching Experience**

In examining the Prior Law Teaching Experience variable, the question is whether Tax Court of Canada judges who taught law before are more likely to vote for taxpayers than other judges, holding other variables constant. The variable is coded the same way as that in the Supreme Court of Canada analysis, with three sub-categories of judges – those who taught law on a full-time basis, those who taught law on a part-time basis and those who did not teach law before. Among the 34 Tax Court of Canada judges, two – Dussault and Hershfield – taught law on a full-time basis before their appointment to the Court. Seven Tax Court of Canada judges – Rip, Tremblay, Brulé, Garon, Archambault, Goetz and Miller – taught law on a part-time basis before. Figure 37 shows the voting records of judges divided by whether they had prior law teaching experience, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and Prior Law Teaching Experience did not occur by chance.<sup>210</sup>

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<sup>210</sup> The differences among the voting records of the three categories of judges are statistically significant at a five-percent level.

**Figure 37: Voting Percentages of Tax Court of Canada Judges and Law Teaching Experience, 1983-2004**



The multivariate analysis suggests that Tax Court of Canada judges who taught law on a full-time basis before are more likely to vote against taxpayers, but judges who taught law on a part-time basis before are more likely to vote for taxpayers, holding all other variables constant. According to the multinomial logistic regression analysis of the voting records of Tax Court of Canada judges, the odds of voting against taxpayers relative to voting for taxpayers are two times greater for judges who taught law on a full-time basis than judges who did not teach law before, holding all other variables constant. The odds of voting against taxpayers relative to voting partially for taxpayers and partially against taxpayers are three times greater for judges who taught law on a full-time basis than judges who did not teach law before, holding all other variables constant.

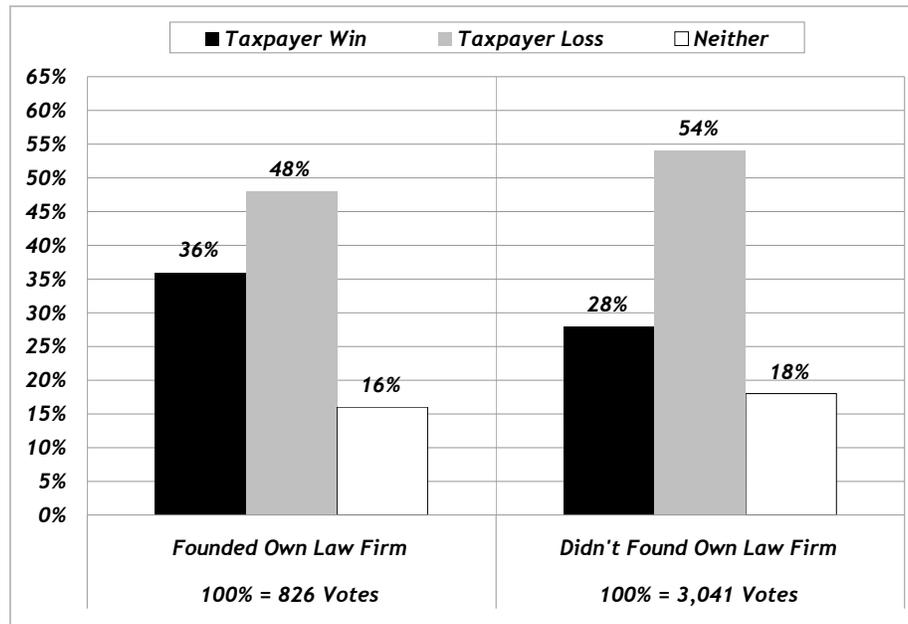
In terms of judges who had part-time law teaching experience, the odds of voting for taxpayers relative to voting against taxpayers are 1.6 times greater for judges who taught law on a part-time basis than judges who did not teach law before, holding all other variables constant. The odds of voting against taxpayers relative to voting partially for taxpayers and partially against taxpayers are 1.4 times greater for judges who taught law on a part-time basis than judges who did not teach law before, holding all other variables constant. The finding on part-time law teaching is in line with the finding of the Supreme Court of Canada exploratory study that judges who taught law before are more likely to vote for taxpayers, holding all other variables constant.

#### **4.2.5 Entrepreneurial Experience**

In examining the Entrepreneurial Experience variable, the question is whether Tax Court of Canada judges who founded their own law firms before are more likely to vote for taxpayers than other judges, holding all other variables constant. The coding is similar to that in the Supreme Court of Canada exploratory study in Section 3 – judges who founded their law firms and judges who did not found their law firms. Among the 34 Tax Court of Canada judges, six judges – Taylor, Bowman, Bell, Teskey, Goetz and Margeson – helped found their own law firms. Figure 38 shows the voting records of the judges divided by whether they had entrepreneurial experience, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and their

Entrepreneurial Experience did not occur by chance.<sup>211</sup>

**Figure 38: Voting Percentages of Tax Court of Canada Judges and Entrepreneurial Experience, 1983-2004**



The multivariate analysis suggests that Tax Court of Canada judges who founded their own law firms are more likely to vote for taxpayers than other judges in some instances, holding all other variables constant. According to the multinomial logistic regression analysis, the odds of voting for taxpayers relative to voting partially for taxpayers and partially against taxpayers are 1.5 times greater for judges who founded their own law firms, holding all other variables constant. In the Supreme Court of Canada

<sup>211</sup> The difference between the voting records of the two categories of judges is statistically significant at a five-percent level.

exploratory study, justices who founded their own law firms did not exhibit one clear voting pattern in all cases.

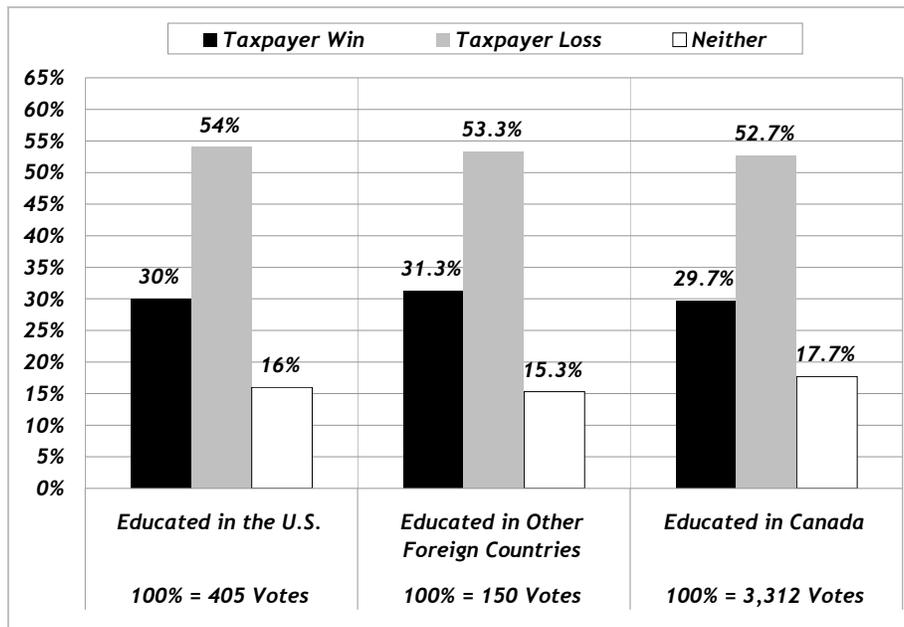
#### **4.2.6 International Education**

In examining the International Education variable, the question is whether Tax Court of Canada judges who went to universities outside Canada are more likely to vote for taxpayers than other judges, holding other variables constant. The coding is different than that in the Supreme Court of Canada analysis in Section 3. In the exploratory data analysis here the variable is broken down into three sub-categories – judges who went to the U.S. universities, judges who went to universities outside the U.S. and Canada and judges who went to universities in Canada. Figure 39 shows the voting records of the judges divided by whether they went to universities outside Canada, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and their International Education occurred by chance.<sup>212</sup>

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<sup>212</sup> The differences among the voting records of the three categories of judges are not statistically significant at a five-percent level.

**Figure 39: Voting Percentages of Tax Court of Canada Judges and Education, 1983-2004**



The multivariate analysis suggests that Tax Court of Canada judges who went to universities outside Canada are more likely to vote for taxpayers than other judges, holding other variables constant. According to the multinomial logistic regression analysis of Tax Court of Canada judges' voting records, the odds of voting for taxpayers relative to voting against taxpayers are 2.8 times greater for judges who went to universities in the U.S. than judges who went to universities in Canada, holding other variables constant. The odds of voting for taxpayers relative to voting partially for taxpayers and partially against taxpayers are 1.8 times greater for judges who went to universities outside the U.S. and Canada than judges who went to universities in Canada, holding other variables constant. That offers a different look at the international education variable that that in the Supreme Court of Canada analysis, which finds that

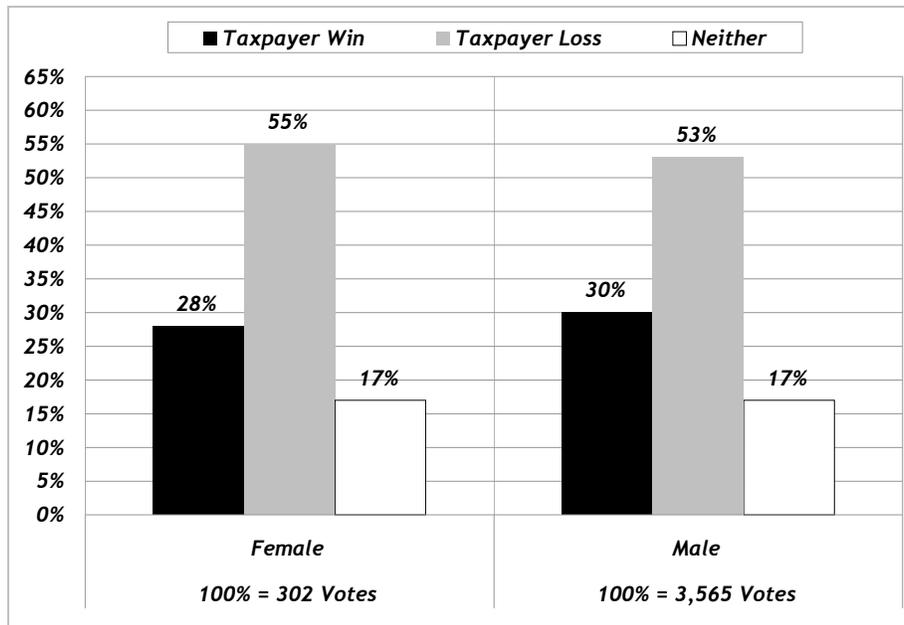
judges who went to universities outside Canada are more likely to vote against taxpayers, holding other variables constant. The reason why the bivariate and multivariate findings yield different results could be due to the fact that the multivariate analysis took into account the behavior of one independent variable in explaining the dependent variable amidst a group of independent variables, while the bivariate analysis limited the attention to the behavior of the relationship between two variables. The difference could be a hint that further analysis may be able to uncover what lies beneath the relationships among the independent variables, and the information could be useful modeling judicial decision making. Again, as in the case of the behavior of the political ties variable, more research is required as the behavior of the international education variable is different in the context of the two courts.

#### **4.2.7 Gender**

The Gender variable is not examined in the Supreme Court of Canada exploratory data analysis. In examining the Gender variable, the question is whether female Tax Court of Canada judges are more likely to vote for taxpayers than male judges, holding all other variables constant. Among the 34 Tax Court of Canada judges, three are women. They are Lamarre (appointed in 1983), Lamarre Proulx (appointed in 1988) and Campbell (appointed in 2000). The three judges accounted for 8% or 302 votes of 3,867 votes in the study period. Figure 40 shows the gender distribution of voting percentages, illustrating that the bivariate relationship between votes cast by Tax Court of Canada

judges and Gender occurred by chance.<sup>213</sup>

**Figure 40: Voting Percentages of Tax Court of Canada Judges by Gender**



Schneider found in his bivariate analysis that taxpayers won more before female U.S. tax and district judges in U.S. tax and district courts. He commented on his finding in the following way: “One possible explanation is that if women generally take less traditional, rule-bound, approaches to law, they will decide in favor of the taxpayer more. Arguably, a male judge would be more likely to perceive the existence of a rule in a tax case being litigated before him and, because he would apply that rule, the government should win. In turn, a female judge would be less likely to abide by the rule, more willing

<sup>213</sup> The difference in the voting records between female and male judges is not statistically significant at a five-percent level.

to distinguish it, and thus more likely to decide in the taxpayer's favor. This rationale, however, seems strained. Judges of both genders can equally claim that they have "rules" on their side."<sup>214</sup>

As an extension of Schneider's observation on gender, the multivariate analysis in this section suggests that female Tax Court of Canada judges are more likely to vote for or against taxpayers than partially for and partially against taxpayers than male judges, holding all other variables constant. According to the multinomial logistic regression analysis of the voting records of Tax Court of Canada judges, the odds of voting for taxpayers relative to voting partially for taxpayers and partially against taxpayers are 1.8 times greater for female judges than male judges, holding all other variables constant. The odds of voting against taxpayers relative to voting partially for taxpayers and partially against taxpayers are 1.7 times greater for female judges than male judges, holding all other variables constant.

#### **4.2.8 Social Networking**

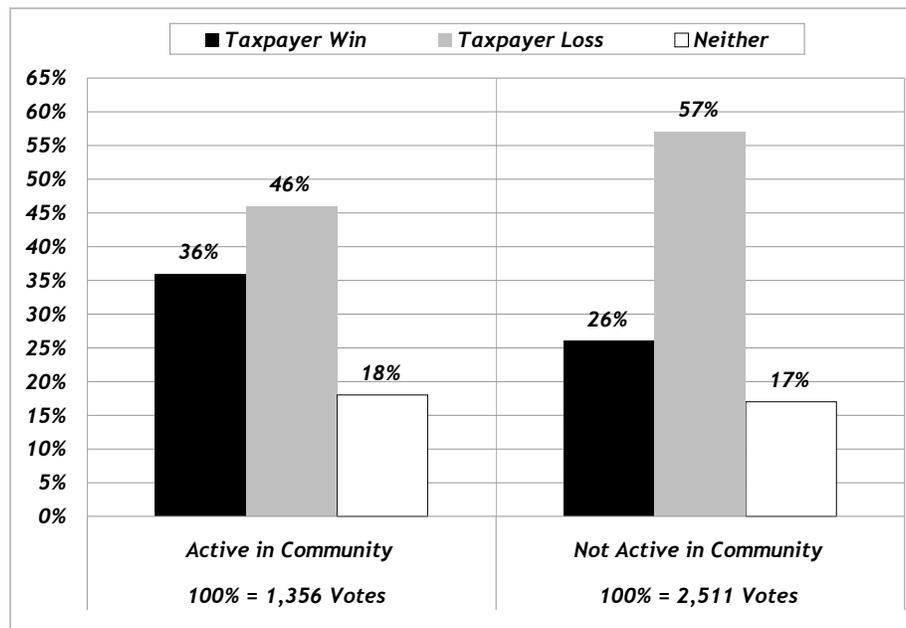
The Social Networking variable is not examined in the Supreme Court of Canada exploratory data analysis. In examining the Social Networking variable, the question is whether Tax Court of Canada judges who were active in their communities are more likely to vote for taxpayers than other judges, holding all other variables constant. The

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<sup>214</sup> Assessing and Predicting Who Wins, *supra* note 106 at 519.

Social Networking activities used in the coding is limited to those mentioned in the judges' official biographies such as involvement in the Canadian Tax Foundation, the Albany Club, university governance, hospital board, arts organization, legal aid clinic and history society. Figure 41 shows the voting records of the judges divided by whether they were active in their communities, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and Social Networking did not occur by chance.<sup>215</sup>

**Figure 41: Voting Percentages of Tax Court of Canada Judges and Social Networking, 1983-2004**



The multivariate analysis suggests that Tax Court of Canada judges who

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<sup>215</sup> The difference between voting records of the two categories of judges is statistically significant at a five-percent level.

participated in Social Networking activities as set forth above are less likely to vote against taxpayers than other judges, holding all other variables constant. According to the multinomial logistic regression analysis of the voting records of Tax Court of Canada judges, the odds of voting for taxpayers relative to voting against taxpayers are 1.7 times greater for judges who participated in their communities than other judges, holding all other variables constant. The odds of voting against taxpayers relative to voting partially for taxpayers and partially against taxpayers are 1.5 times greater for judges who participated in their communities than other judges, holding all other variables constant.

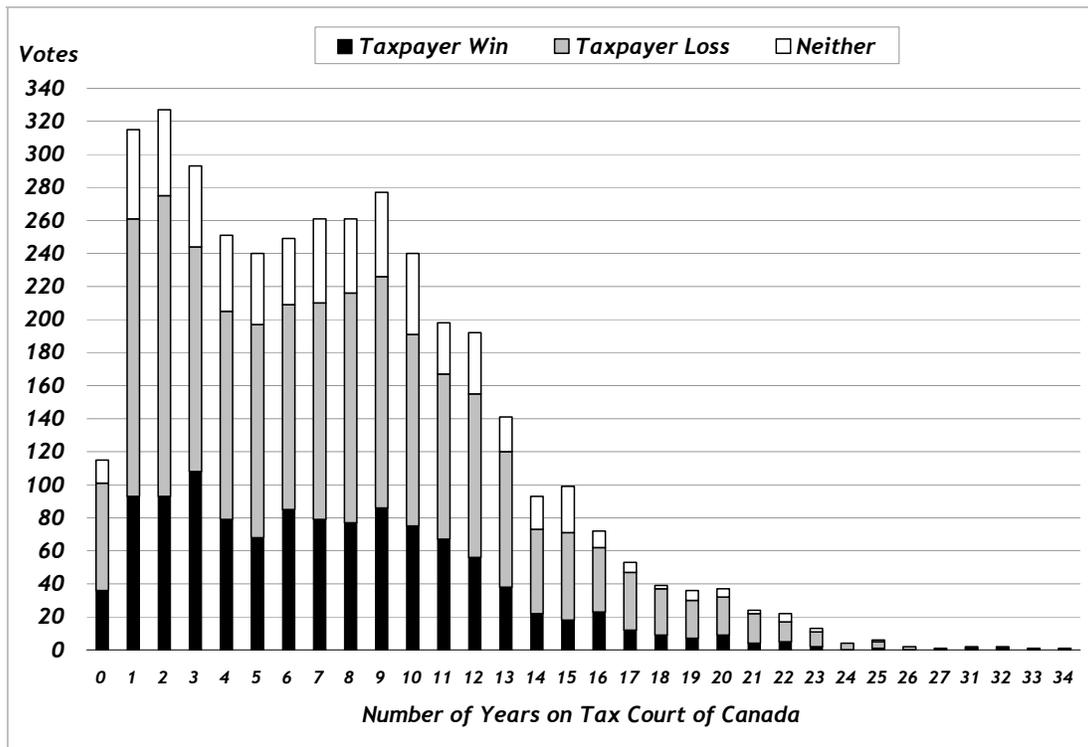
#### **4.2.9 Tenure**

The Tenure variable is not examined in the Supreme Court of Canada exploratory data analysis. In examining the Tenure variable, the question is whether Tax Court of Canada judges who served for a longer period on the Tax Court of Canada are more likely to vote for taxpayers than those who served on the Court for a shorter period, holding all other variables constant. The Tenure variable represents the number of years served on the Tax Court of Canada of a judge when a case was decided. Figure 42 shows the votes cast by the judges by the number of years they served on the Court when they cast the votes, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and Tenure occurred by chance.<sup>216</sup>

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<sup>216</sup> The pairwise correlation between the voting records of judges and the Tenure variable is not statistically

Figure 42: Voting Records of Judges and Tenure, 1983-2004



As shown in Figure 42, the number of years served on the Court of Tax Court of Canada judges when they decided the cases ranges from less than a year to 34 years. Over 70% of the votes were cast by judges with less than ten years of experience on the Court. The voting percentages for taxpayers range from a high of 37% for three years of experience on the Court to a low of 0% for tenure of over 24 years in many instances. The voting percentages against taxpayers range from a high of 100% for tenure of over 24 years in many instances to a low of 46% for three years of experience on the Court.

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significant at a five-percent level.

The percentages of voting partially for and against taxpayers range from a high of 50% to a low of 0% for tenure of over 31 years in many instances. The extreme values in the ranges of voting percentages should be discounted as the total number of votes cast by very senior judges is very small.

Tax Court of Canada judges appeared to be voting against taxpayers more often the longer they served on the Court as shown in Figure 42. That seems to fit Schneider's observation that taxpayers won more before U.S. tax and district court judges with shorter tenure.<sup>217</sup> However, the multivariate analysis tells a more elaborated story.

The multinomial logistic regression analysis shows that the judges are likely to vote for taxpayers in their early years on the Court but against taxpayers in their later years. The odds of voting for taxpayers relative to voting against taxpayers are greater for judges who served for seven and a half years or less on the Court but the pattern reverses for judges who served for eight years or more. The odds of voting partially for taxpayers and partially against taxpayers relative to voting against taxpayers are greater for judges who served for 11 years or less but the pattern reverses for judges who served for 12 years or more on the Court.

#### **4.2.10 Government Law Practice**

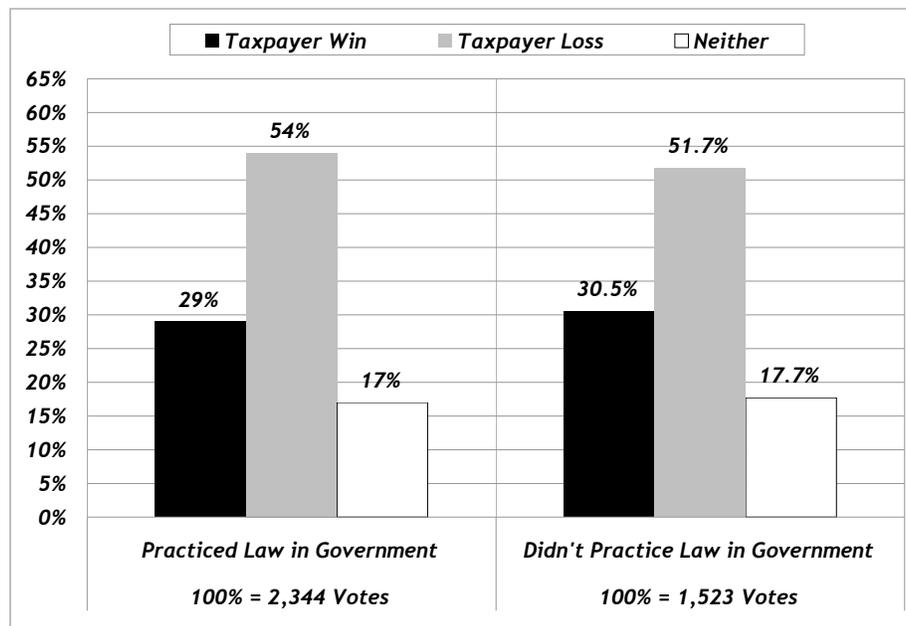
The Government Law Practice variable is not examined in the Supreme Court of

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<sup>217</sup> Assessing and Predicting Who Wins, *supra* note 106 at 524.

Canada exploratory data analysis. In examining the Government Law Practice variable, the question is whether Tax Court of Canada judges who practiced law in government are more likely to vote for taxpayers than other judges, holding all other variables constant. Among the 34 judges, 18 practiced law in government. Figure 43 shows the voting records of the judges divided by whether they practiced law in government before, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and Government Law Practice occurred by chance.<sup>218</sup>

**Figure 43: Voting Percentages of Tax Court of Canada Judges and Government Law Practice, 1983-2004**



<sup>218</sup> The difference between the two categories of judges is not statistically significant at a five-percent level.

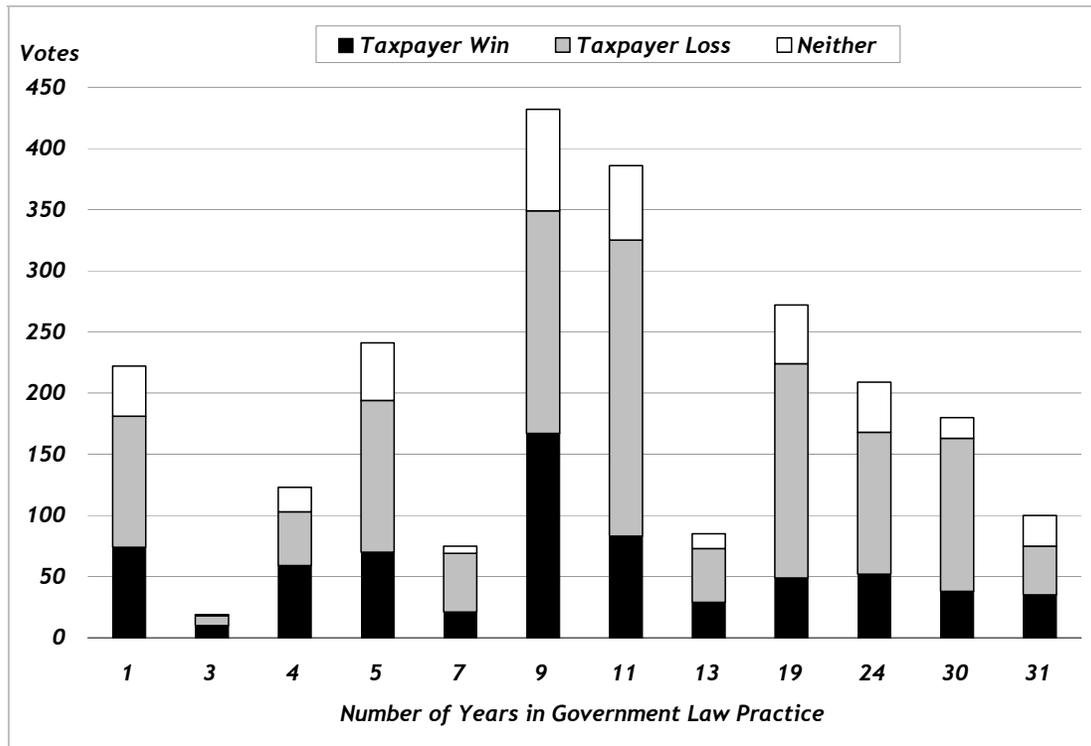
The multivariate analysis suggests that Tax Court of Canada judges who practiced law in government are less likely to vote against taxpayers than other judges, holding all other variables constant. According to the multinomial logistic regression analysis of the voting records of the judges, the odds of voting for taxpayers relative to voting against taxpayers are 1.9 times greater for judges who practiced law in government than other judges, holding all other variables constant. The odds of voting partially for taxpayers and partially against taxpayers relative to voting against taxpayers are 1.5 times greater for judges who practiced law in government than other judges, holding all other variables constant. However, there are nuances about the above claim as revealed in the discussion of the years in Government Law Practice variable below.

#### **4.2.11 Years in Government Law Practice**

The Years in Government Law Practice variable is not examined in the Supreme Court of Canada exploratory data analysis. In examining the Years in Government Law Practice variable, the question is whether Tax Court of Canada judges who practiced law in government for a longer period are more likely to vote for taxpayers than other judges, holding all other variables constant. Figure 44 shows the voting records of the judges divided by their years in government law practice, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and their years in

government law practice did not occur by chance.<sup>219</sup>

**Figure 44: Voting Records of Tax Court of Canada Judges and Years in Government Law Practice, 1983-2004**



As shown in Figure 44, the number of years Tax Court of Canada judges practiced law in government ranges from one to 31 years. Judges who had nine or more years in government law practice account for over 40% of the total votes cast, while judges who had 19 or more years in government law practice account for over 19% of the

<sup>219</sup> The pairwise correlation between the voting records of judges and the years in government law practice is statistically significant at a five-percent level.

total votes cast. The voting percentages for taxpayers range from a high of 53% for three years of experience in law practice in government to a low of 18% for 19 years of such experience. The voting percentages against taxpayers range from a high of 69% for 30 years of experience in law practice in government to a low of 36% for four years of such experience. The percentages of voting partially for and against taxpayers range from a high of 25% for 31 years of experience in law practice in government to a low of 5% for three years of such experience.

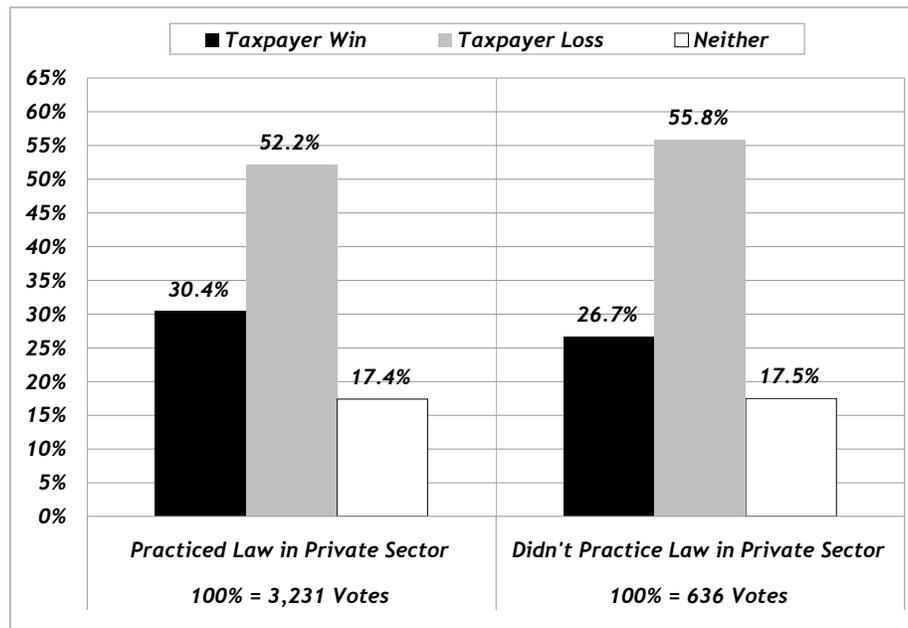
Tax Court of Canada judges appeared to be voting more often against taxpayers the longer they practiced law in government as shown in Figure 44, but the multinomial logistic regression analysis reveals something different. According to the multinomial logistic regression analysis, the odds of voting against taxpayers relative to voting for taxpayers are greater for judges who practiced law in government for six years or less but the odds reverse for judges who practiced law in government for six and a half years and more.

#### **4.2.12 Private Law Practice**

The Private Law Practice variable is not examined in the Supreme Court of Canada exploratory data analysis. In examining the Private Law Practice variable, the question is whether Tax Court of Canada judges who practiced law in the private sector are more likely to vote for taxpayers than other judges, holding all other variable constant. Among the 34 judges in the dataset, only four had not practiced law in the

private sector. They were Cardin, Dussault, Lamarre Proulx and Taylor. Figure 45 shows the voting records of the judges divided by whether they practiced law in the private sector before, illustrating that the bivariate relationship between votes cast by Tax Court of Canada justices and Private Law Practice occurred by chance.<sup>220</sup>

**Figure 45: Voting Percentages of Tax Court of Canada Judges and Private Law Practice**



The multivariate analysis suggests that Tax Court of Canada judges who practiced law in the private sector are less likely to vote partially for taxpayers and partially against taxpayers than other judges, holding all other variables constant. According to the multinomial logistic regression analysis of the voting records of Tax Court of Canada

<sup>220</sup> The difference between the two categories of judges is not statistically significant at a five-percent level.

judges, the odds of voting for taxpayers relative to voting partially for taxpayers and partially against taxpayers are 2.2 times greater for judges who practiced law in the private sector than other judges, holding all other variables constant. The odds of voting against taxpayers relative to voting partially for taxpayers and partially against taxpayers are 2.1 times greater than judges who practiced law in the private sector than other judges, holding all other variables constant.

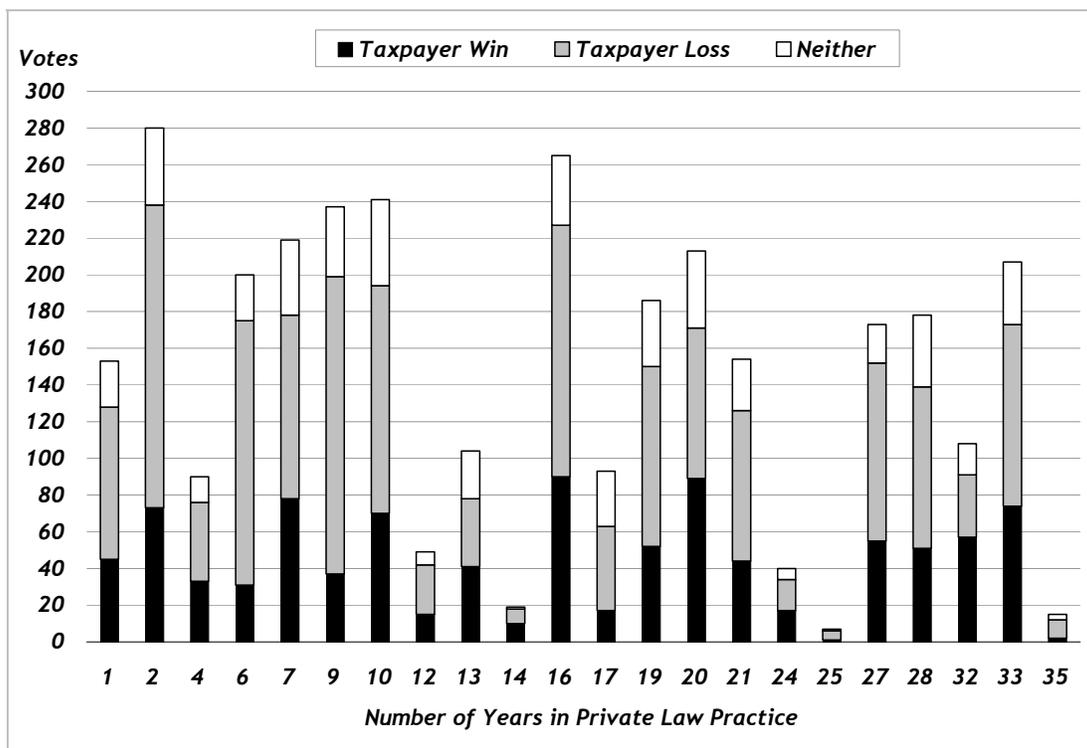
#### **4.2.13 Years in Private Law Practice**

The Years in Private Law Practice variable is not examined in the Supreme Court of Canada exploratory data analysis. In examining the Years in Private Law Practice variable, the question is whether Tax Court of Canada judges who practiced law in the private sector for a longer period are more likely to vote for taxpayers than judges who practiced law in the private sector for a shorter period. Figure 46 shows the voting records of the judges divided by their years in private law practice, illustrating that the bivariate relationship between votes cast by Tax Court of Canada judges and their years in government law practice did not occur by chance.<sup>221</sup>

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<sup>221</sup> The pairwise correlation between the voting records of the judges and their years in private law practice is statistically significant at a five-percent level.

**Figure 46: Voting Records of Tax Court of Canada Judges and Years in Private Law Practice**



The voting percentages for taxpayers range from a high of 53% for 14 and 32 years of experience in private law practice to a low of 13% for 35 years of such experience. The voting percentages against taxpayers range from a high of 72% for three years of experience in private law practice to a low of 31% for 32 years of such experience. The percentages of voting partially for and against taxpayers range from a high of 32% for 17 years of experience in private law practice in government to a low of 5% for 14 years of such experience. The voting percentages of judges who practiced law in the private sector appear to be similar to judges who practiced law in government as shown in Figure 46, but the variable is not influential in judicial decision making in the

Tax Court of Canada, according to the multinomial logistic regression analysis of the voting records of Tax Court of Canada judges.<sup>222</sup>

#### **4.2.14 Interpretation of Multinomial Logistic Regression Results**

The results of the multinomial logistic regression analysis of the voting records of Tax Court of Canada judges and their socio-demographic characteristics can be divided into five groups: variables that increase the likelihood of voting for taxpayers; variables that decrease the likelihood of voting for taxpayers; variables that increase the likelihood of voting against taxpayers; variables that increase the likelihood of voting for or against taxpayers in different times; and variables that increase the likelihood of voting neither totally for nor against taxpayers.

First, three variables that can be seen as increasing the likelihood of voting for taxpayers are International Education, Prior Judicial Experience and Entrepreneurial Experience.

- Judges who went to universities outside Canada are more likely to vote for taxpayers than others;
- Judges who were judges before are more likely to vote for taxpayers than others; and
- Judges who founded their own law firms are more likely to vote for

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<sup>222</sup> The multinomial regression results of the variable are not statistically significant at a five-percent level.

taxpayers than others.

Second, three variables that can be seen as decreasing the likelihood of voting against taxpayers are Private Law Practice, Part-time Law Teaching Experience and Social Networking.

- Judges who practiced law in the private sector are less likely to vote against taxpayers than others;
- Judges who taught law on a part-time basis before are less likely to vote against taxpayers than judges who did not teach law before; and
- Judges who were active in their communities are less likely to vote against taxpayers than others.

Third, two variables that can be seen as increasing the likelihood of voting against taxpayers are Full-time Law Teaching Experience and Political Ties.

- Judges who taught law on a full-time basis before are more likely to vote against taxpayers than judges who did not teach law before; and
- Judges who were appointed by Liberal Party prime ministers are more likely to vote against taxpayers than others.

Fourth, two variables that can be seen as influential in voting propensity in opposite timelines are Tenure and Years in Government Law Practice.

- Judges are more likely to vote for taxpayers in their early years but vote against taxpayers in their later years; and
- Judges who practiced law in government are more likely to vote against

taxpayers in their early years but vote for taxpayers in their later years.

Fifth, the variable that can be seen as decreasing likelihood in voting neither totally for nor totally against taxpayers is Gender.

- Female judges are less likely to vote partially for taxpayers and partially against taxpayers than male judges.

As a very crude summary, Tax Court of Canada judges who are more likely to vote for taxpayers may include those who went to universities outside Canada, served on the bench before and taught law on a part-time basis before. Tax Court of Canada judges who are more likely to vote against taxpayers may include those who were appointed by prime ministers from the Liberal Party and taught law on a full-time basis.

The multinomial regression analysis highlights two points. First, as shown earlier, the six variables that were examined in the Supreme Court of Canada exploratory data analysis – Political Ties, Regional Ties, Prior Judicial Experience, Prior Law Teaching Experience, Entrepreneurial Experience and International Education – generate findings that are different from those in the Supreme Court of Canada exploratory data analysis. The differences could be attributed to the differences between the Tax Court of Canada and the Supreme Court of Canada. More research is required to understand that.

Second, the exploratory data analysis of some variables – Social Networking, Political Ties, Part-time Law Teaching Experience, Private Law Practice and Full-time Law Teaching Experience – generates findings that have some intuitive appeal. Tax Court of Canada judges who were active in their communities were pillars of their

communities, and the nature of the Social Networking activities as disclosed in their official biographies lends to the conjecture that such Social Networking may lead to plenty of opportunities of socializing with the upper echelon of the society, and such socialization may help shape the judges' sympathy towards taxpayers and against taxation and government spending. However, some judges had ties to the Liberal Party, and ties to the Liberals rather than the Conservatives may reflect a little bit more sympathy toward taxation, the financing mechanism of government programs. Tax Court of Canada judges who taught law on a part-time basis were tax law practitioners, and as they often represented taxpayers, perhaps their prior affiliation with taxpayers helped shape their perspectives. Comparatively speaking, academics may be more critical towards claims made by taxpayers. More research is definitely required to make sense of the empirical findings on judicial decision making in Tax Court of Canada judges.

#### **4.3 Simulated Voting Patterns of Current Tax Court of Canada Judges**

Based on the multinomial logistic regression analysis, simulated voting patterns of the current 25 Tax Court of Canada judges are generated for the year 2007.<sup>223</sup> Focusing on a specific year takes into consideration of Tenure in the simulation. Fixing the year at 2007 pegs Tenure to be the number of years judges served on the Court until

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<sup>223</sup> See Appendix III for socio-demographic characteristics of the current Tax Court of Canada judges used for the simulation.

2007. Figure 47 shows the simulated voting scenarios.

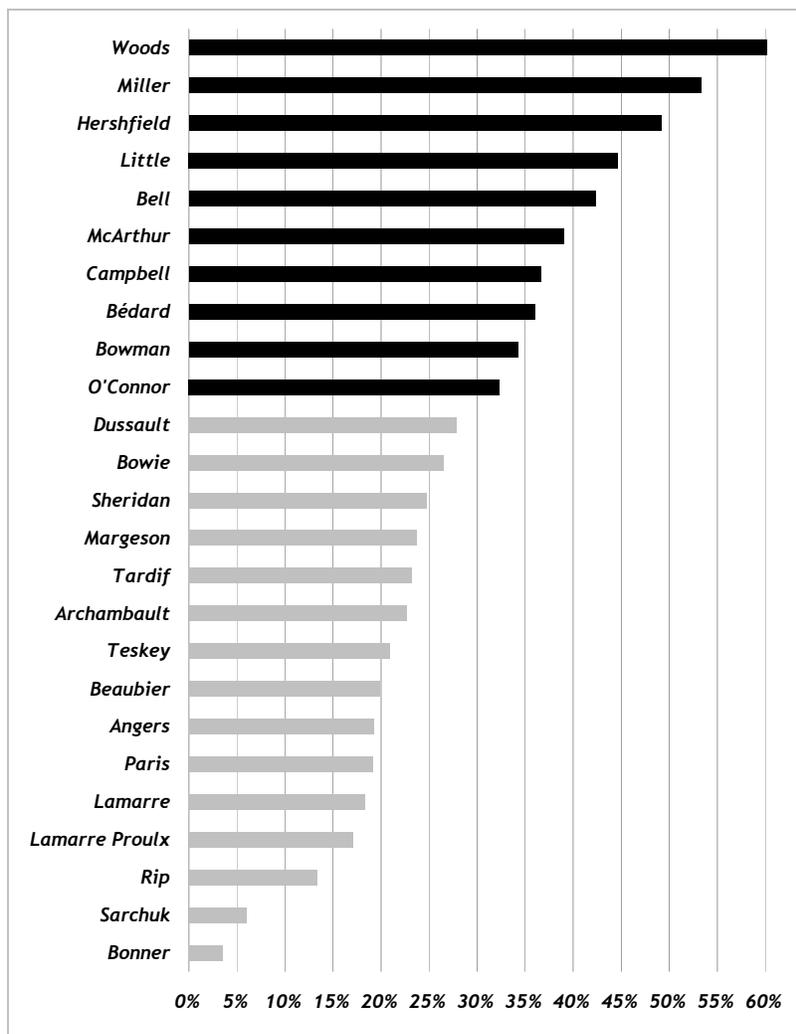
Figure 47: Simulated Voting Percentages of Current Tax Court of Canada Judges in 2007

<i>Judges</i>	<i>Taxpayer Win</i>	<i>Taxpayer Loss</i>	<i>Neither</i>
<i>Angers</i>	19%	66%	15%
<i>Archambault</i>	23%	61%	16%
<i>Beaubier</i>	20%	57%	23%
<i>Bédard</i>	36%	53%	11%
<i>Bell*</i>	42%	38%	20%
<i>Bonner*</i>	4%	89%	8%
<i>Bowie</i>	26%	58%	15%
<i>Bowman</i>	34%	47%	19%
<i>Campbell</i>	37%	46%	17%
<i>Dussault</i>	28%	50%	22%
<i>Hershfield</i>	49%	38%	13%
<i>Lamarre</i>	18%	71%	11%
<i>Lamarre Proulx</i>	17%	63%	20%
<i>Little</i>	45%	38%	17%
<i>Margeson</i>	24%	56%	21%
<i>McArthur</i>	39%	47%	14%
<i>Miller</i>	53%	26%	21%
<i>O'Connor*</i>	32%	47%	20%
<i>Paris</i>	19%	52%	29%
<i>Rip</i>	13%	76%	11%
<i>Sarchuk*</i>	6%	81%	13%
<i>Sheridan</i>	25%	65%	10%
<i>Tardif</i>	23%	57%	19%
<i>Teskey*</i>	21%	66%	13%
<i>Woods</i>	60%	31%	9%
<b>Average</b>	<b>29%</b>	<b>55%</b>	<b>16%</b>
<i>* denotes supernumerary judge</i>			

According to the simulation, an average judge is predicted to vote for taxpayers 29% of the times, against taxpayers 55% of the times, and partially for and partially against taxpayers 16% of the times. Rank-order analysis can uncover more information

from the simulated voting patterns. Figure 48-50 show the simulated voting patterns ranked by voting propensity for taxpayers, voting propensity against taxpayers and voting propensity partially for and partially against taxpayers.

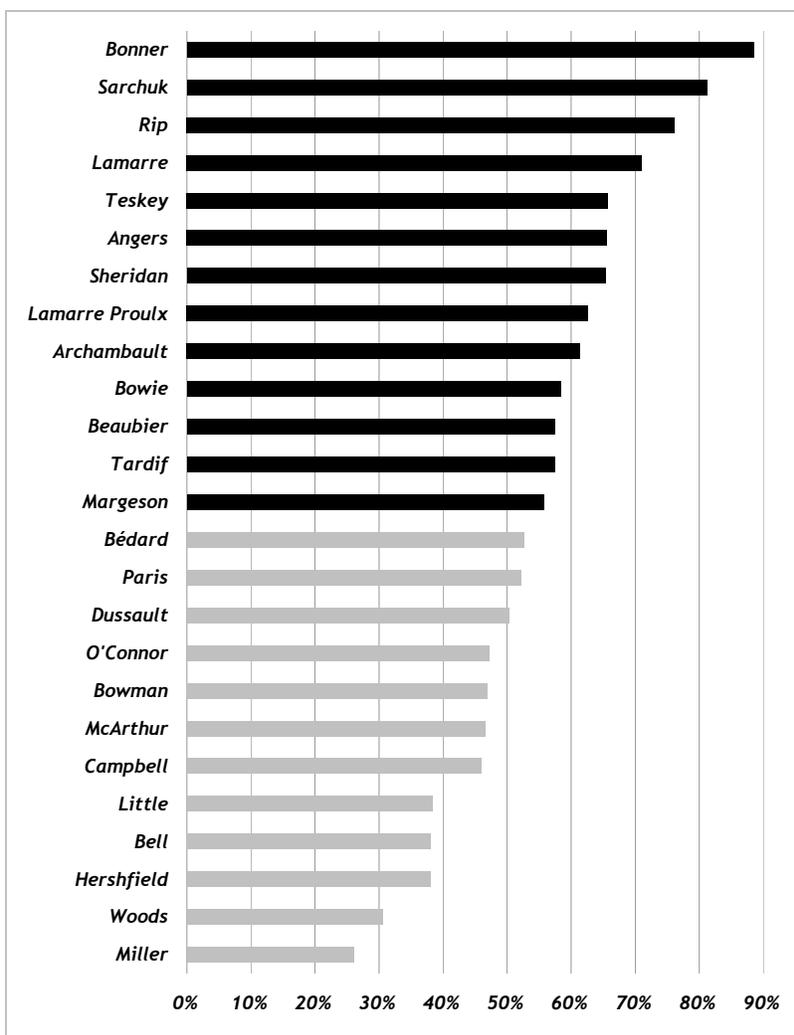
**Figure 48: Simulated Voting Percentages for Taxpayers, 2007**



As shown in Figure 48, the propensity of voting for taxpayers ranges from 60% by Woods to 4% by Bonner. As highlighted with black horizontal bars in Figure 48, ten

judges – Woods, Miller, Hershfield, Little, Bell, McArthur, Campbell, Bédard, Bowman and O'Connor – exhibit above-average propensity in voting for taxpayers.

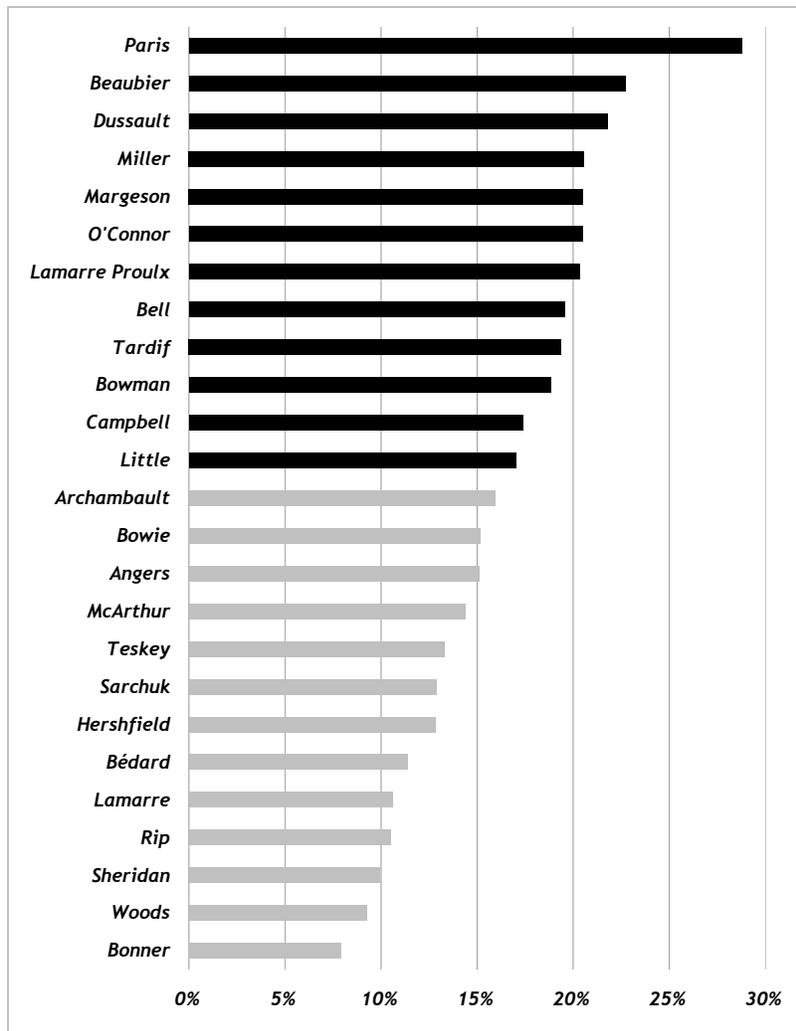
**Figure 49: Simulated Voting Percentages against Taxpayers, 2007**



As shown in Figure 49, the propensity of voting against taxpayers ranges from 89% by Bonner to 26% by Miller. As highlighted with black horizontal bars in Figure 49, 13 judges – Bonner, Sarchuk, Rip, Lamarre, Teskey, Angers, Sheridan, Lamarre Proulx,

Archambault, Bowie, Beaubier, Tardif and Margeson – exhibit above-average propensity in voting against taxpayers.

**Figure 50: Simulated Percentages of Voting Partially For and Partially Against Taxpayers, 2007**



As shown in Figure 50, the propensity of voting partially for taxpayers and partially against taxpayers ranges from 29% by Paris to 8% by Bonner. As highlighted

with black horizontal bars in Figure 50, 12 judges – Paris, Beaubier, Dussault, Miller, Margeson, O'Connor, Lamarre Proulx, Bell, Tardif, Bowman, Campbell and Little – exhibit above-average propensity in voting partially for taxpayers and against taxpayers.

In sum, the simulated voting patterns show that taxpayers have a slightly better chance of having a Tax Court of Canada judge who is likely to vote against taxpayers than otherwise. According to the simulation, half of the 25 sitting Tax Court of Canada judges are likely to vote against taxpayers more often than an average judge, and half of the 25 judges are likely to vote partially for and partially against taxpayers more often than an average judge. In comparison, less than half of the judges are likely to vote for taxpayers more often than an average judge. In terms of individual judges, Bonner has the highest propensity to vote against taxpayers, while Woods has the highest propensity to vote for taxpayers.

Again, I would like to stress that the findings of the exploratory data analysis reaffirm the need for empirical legal research in judicial decision making. Future research is recommended to be performed as a collaborative research enterprise between quantitative and qualitative researchers to explain the empirical findings. For example, the quantitative research finds that voting patterns change over a period as shown in results of the Tenure and Years in Government Law Practice variables, and it would be interesting for qualitative researchers to further examine the findings, for example, via interviewing judges or digging into papers of the judges or both. Section 5.4 expands on the idea of the adoption of such a mixed research approach.