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Justice Martin Has Retired from the Supreme Court. What Impact Will That Have Going Forward?

Justice Sheilah Martin announced earlier this year that she would retire from the Supreme Court of Canada, effective May 30, 2026. The announcement was somewhat surprising. Justice Martin was still five years away from her mandatory retirement date, and her successor has not yet been appointed.

Even before that appointment is made, it is worth considering what impact Justice Martin's retirement might have on the Court.

At one level, that question is impossible to answer with confidence. The Supreme Court is a complex institution composed of nine judges with roughly equal formal authority. A judge's influence on the development of the law depends not only on their judicial philosophy and areas of interest, but also on their relationships with colleagues, their ability to persuade, and their capacity to form coalitions in particular cases. Isolating and describing the effect of a single judge's departure is inherently difficult.

That uncertainty is especially pronounced here because we do not yet know who will replace Justice Martin. Her successor may share some aspects of her approach or may bring a meaningfully different perspective. Until that appointment is made, any prediction about the Court's future direction must be tentative.

Still, the data on Justice Martin's decision-making offers useful guidance. It cannot predict what her successor will do, but it can help identify where Justice Martin's presence on the Court has mattered most, and therefore where her departure may prove most consequential.

Justice Martin's Authorship

Justice Martin served on the Court from December 18, 2017 until her retirement took effect on May 30, 2026.

Using the data in our Supreme Court Appeals database, we looked at the types of cases in which Justice Martin most often wrote reasons relative to her colleagues.

At a high level, the results are unsurprising. The vast majority of the cases in which Justice Martin wrote were criminal law or *Charter*

cases, a natural reflection of the Court's docket, which is dominated by criminal and constitutional law matters. For virtually every judge on the Court, criminal law cases account for a significant share of their written output.

The more interesting question is not simply where Justice Martin wrote most often in absolute terms, but where she wrote more or less often relative to her colleagues.

Criminal Law

On that measure, our dataset shows that Justice Martin's relative contribution was especially significant in criminal law, including both non-*Charter* criminal matters and criminal cases involving *Charter* issues. She authored or co-authored majority reasons in a number of important criminal and *Charter* decisions, including *R v Le*, *R v Khill*, *R v Hills*, *R v Hilbach*, *R v Kruk*, and *R v Ndhlovu*. Those cases reflect a sustained engagement with issues of police powers, criminal liability, sentencing, and the constitutional limits of the criminal law.

Administrative Law

Although the sample size is smaller, Justice Martin had an outsized influence in administrative law. Most notably, she co-authored the Court's landmark reasons in *Vavilov*, which restructured the Canadian law of judicial review and remains one of the most important public law decisions of the last decade.

Family Law

Justice Martin wrote with some regularity in family law matters despite the Court's relatively small family law docket. That makes her contribution in that area notable. Where the Court did hear family law cases, she frequently wrote reasons, including the notable decision *BJT v JD*, where Justice Martin wrote for a unanimous full panel.

By contrast, Justice Martin wrote relatively less often than the other judges in cases involving:

- Division of powers
- Civil procedure and the administration of justice
- Commercial law

There were important exceptions. In *Earthco Soil Mixtures Inc v Pine Valley Enterprises Inc*, for example, she wrote in a significant contractual interpretation case dealing with the Ontario *Sale of Goods Act* and exclusion clauses. But commercial law was not, overall, an area where she most frequently served as the Court's voice.

The authorship data therefore suggests Justice Martin's departure will be felt most acutely in criminal law. She was not simply a judge who happened to write in criminal cases because the Court hears many of them. She was one of the Court's most important criminal law judges. Her reasons often reflected a deep familiarity with the architecture of the *Criminal Code*, the practical realities of the criminal justice system, and the constitutional principles that shape police powers, trial fairness, and sentencing.

Voting Patterns

Another way to assess the impact of Justice Martin's departure is to look at how she voted relative to her colleagues.

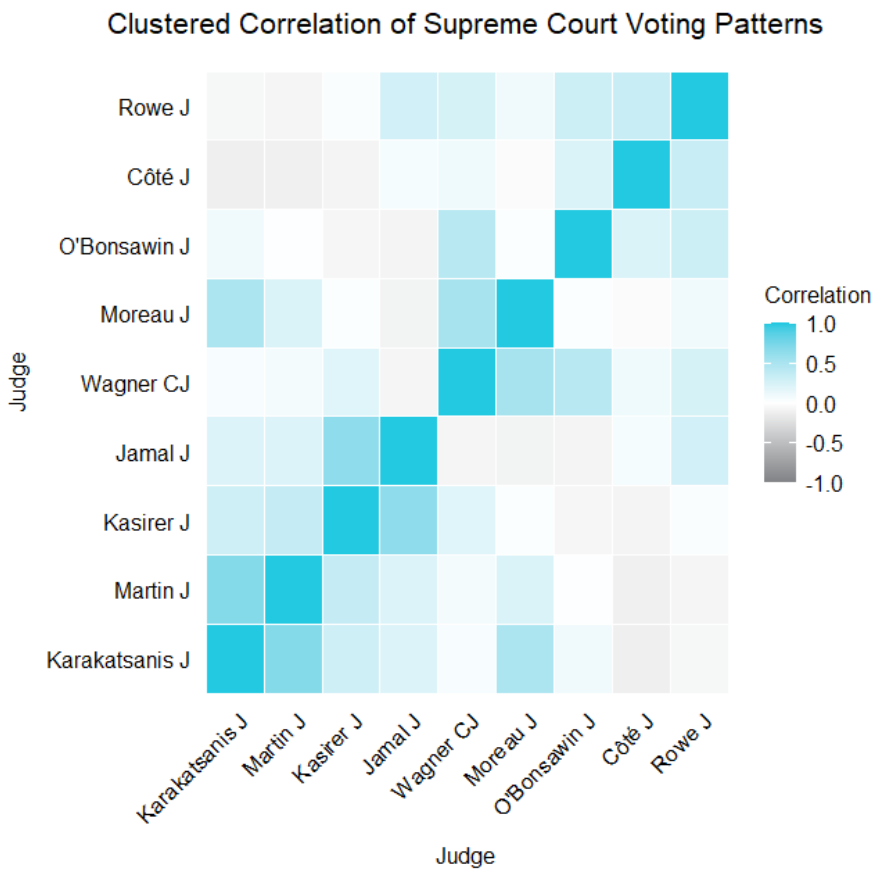
Judges have different judicial philosophies. Some judges' approaches to interpretation, institutional role, precedent, and adjudication may be more similar than others. Over a large enough set of cases, those similarities can appear in voting patterns.

To be clear, this is not to suggest that judges are partisan actors pursuing political agendas. The point is more modest. Judges may have different and relatively stable perspectives on:

- Legal interpretation
- The proper role of courts
- The relationship between text and purpose
- The weight to give precedent
- The extent to which courts should account for institutional or practical consequences

Those perspectives can produce systematic patterns in decision-making.

The simplest way to examine those patterns is to look at how often judges vote together. The heat map below shows the likelihood that judges voted together on the outcome of a case. Darker teal indicates a higher degree of correlation; white indicates that judges more often voted in opposite directions.



As the heat map shows, the Court has historically been a relatively collegial institution with a high degree of consensus. Most cases are not sharply divided. Many are unanimous. Even where judges write separately, the differences are often narrower than the existence of multiple sets of reasons might suggest.

But the data still reveals identifiable clusters. Across all cases, Justice Martin's voting patterns correlated strongly with those of Justice Karakatsanis, and to a lesser extent with those of Justices Kasirer and Jamal. By contrast, her votes were less closely correlated with those of Justices Côté and Rowe.

That does not mean that Justice Martin never voted with Justice Côté or Justice Rowe. She plainly did. For example, she co-authored a significant majority opinion with Justice Côté in *Reference re Code of Civil Procedure (Que)*, a case in which a seven-judge panel produced three sets of reasons and the alignments did not follow the Court's more familiar voting patterns. In that case, Justices Côté and Martin wrote jointly for the majority; Justices Moldaver and Karakatsanis concurred with those reasons; Chief Justice Wagner and Justice Rowe dissented in part; and Justice Abella dissented.

That kind of case is a useful reminder that voting correlations

are not destiny. Judges do not vote in fixed blocs. Particular legal issues can produce unusual coalitions. A judge who is generally closer to one colleague than another may nevertheless align differently in a specific case depending on the statute, doctrine, precedent, or institutional question at issue.

Implications for Court Dynamics

Over time, voting correlations can reveal meaningful tendencies. The data suggests that Justice Martin occupied a position on the Court that was often closer to Justices Karakatsanis, Kasirer, and Jamal than to Justices Côté and Rowe. Without trying to characterize the judicial philosophies of those judges (a more complex task for another day), that pattern suggests that Justice Martin's retirement could affect the Court's voting dynamics, depending on her successor's approach.

- If her replacement takes a similar approach, the Court's internal balance may remain largely unchanged.
- If her replacement aligns more closely with other members of the Court, the effect could be significant – not necessarily across the whole docket, but in the kinds of cases where the Court is already closely divided.

Closely Divided Cases

A third way to assess the potential impact of Justice Martin's retirement is to focus on closely divided cases; specifically, decisions in which the Court decided at least one issue by a five-four margin. These cases are, at least in theory, most sensitive to changes in the Court's composition.

Important Caveats

That does not mean that every five-four decision is unstable. Many cases initially decided by a narrow majority later become settled and accepted parts of Canadian law. A slim majority does not, by itself, make a precedent fragile.

Nor are five-four cases necessarily the most unstable decisions. Cases with fractured reasons and multi-way splits may be even more vulnerable to uncertainty. In those cases, the difficulty is not merely that the Court was closely divided, but that there may be no single authoritative rationale commanding a majority. *R v Zacharias* is one example: Justice Martin and Justice Kasirer wrote joint dissenting reasons in a case involving a fragmented division of the Court. Those kinds of cases can be especially difficult for lower courts and litigants because the operative rule may be harder to identify.

Still, five-four decisions are an important category. They reveal issues on which the Court was sharply divided. They also identify areas where the law may be more open to reconsideration, refinement, or limitation in the short to medium term.

The Numbers

We analyzed our Supreme Court of Canada decisions dataset to identify every decision in which Justice Martin participated and at least one issue was decided by a five-four split. We identified 31 such decisions. Justice Martin was in the majority in 16 of them and in dissent in 15.

That split is important. For the cases in which Justice Martin dissented, her retirement is unlikely to weaken the existing precedent. If her successor shared her views, those results would remain unchanged. If her successor would have voted with the majority, those precedents would, if anything, be reinforced.

The more interesting category is the set of five-four cases in which Justice Martin was in the majority. In those cases, her vote was part of the coalition that established the governing rule. If a similar issue returned to the Court, and if her successor approached it differently, the underlying precedent could be more vulnerable—not necessarily to outright reversal, but to narrowing, distinguishing, or doctrinal reorientation.

Private Law Cases

The private law cases are particularly interesting. In class action cases such as *TELUS Communications Inc v Wellman* and *Atlantic Lottery Corp Inc v Babstock*, Justice Martin joined dissenting reasons that would have been more favourable to plaintiffs or class members. In *Sinclair v Venezia Turismo*, she again joined the dissent on the side of plaintiffs against corporate defendants.

But that pattern does not reduce to a simple plaintiff-defendant axis. In cases involving disputes between private property owners and municipalities, Justice Martin tended to favour

municipalities. In *Annapolis Group Inc v Halifax Regional Municipality* and *Kosicki v Toronto (City)*, she took positions more favourable to municipal defendants than to private landowners.

The better description may be that Justice Martin was often attentive to structural and institutional consequences: access to justice and collective redress in the class action context, but municipal authority and public regulatory capacity in land-use disputes.

Criminal & *Charter* Cases

In criminal and *Charter* cases, the pattern is clearer. In many closely divided criminal cases, Justice Martin favoured relatively expansive understandings of *Charter* rights and relatively firm limits on state power. That can be seen both in reasons she wrote, such as *R v Ndhlovu*, and in votes she cast in cases such as *R v Lafrance* and *R v Bykovets*. Similarly, in equality rights cases, she took an expansive view of section 15, joining or writing reasons favourable to claimants in *Fraser v Canada (Attorney General)* and *R v Sharma*.

That does not mean Justice Martin's approach was reducible to results. Her reasons often paid close attention to statutory text, doctrinal structure, and the practical operation of the criminal justice system. *R v Wolfe* illustrates this well. In that case, Justice Martin wrote for the majority in a criminal statutory interpretation dispute involving the interaction of *Criminal Code* provisions. The reasons reflected a highly technical understanding of the statutory scheme and the way interdependent *Code* provisions operate together.

That may be one of the less obvious but more important implications of her departure. Justice Martin was not only a judge who often took rights-protective positions in criminal and *Charter* cases. She was also one of the Court's most experienced criminal law judges. Her departure may therefore be felt most strongly in cases that require close familiarity with the *Criminal Code*, criminal procedure, sentencing architecture, and the operational realities of the criminal justice system.

Key Takeaways

The significance of Justice Martin's retirement may lie less in an immediate doctrinal shift than in the future development of closely contested areas of law.

The data does not show that her departure will transform the Court. Nor could it. The impact of any judicial retirement depends on the successor, the cases that come before the Court, and the coalitions that form in particular disputes. The Court is not static, and judicial influence is not mechanical.

But the data does suggest several areas where the change may matter most.

1. Criminal Law. Justice Martin's absence will likely be most noticeable here. She wrote frequently in this area, brought substantial expertise to it, and participated in many of the Court's most important recent criminal and *Charter* decisions.

2. Closely Divided *Charter* Cases. Her departure may affect the Court's balance in cases involving police powers, trial fairness, sentencing, and equality rights. Those are areas where she often formed part of a rights-protective coalition.

3. Private Law. Her retirement may matter in some areas of private law, though in a more complicated way. Her votes in class actions and plaintiff-side civil claims suggest one set of tendencies; her votes in municipal land-use cases suggest another. The through-line may be less about favouring a particular category of litigant and more about how she understood institutional context, access to justice, and the relationship between private rights and public authority.

4. Internal Court Dynamics. Justice Martin's voting patterns aligned most closely with Justice Karakatsanis and somewhat with Justices Kasirer and Jamal. If her successor approaches judging differently, the Court's existing coalitions may shift, especially in cases where the current Court is already divided.

Justice Martin's retirement matters not because it guarantees any particular doctrinal change, but because it removes a judge with a distinctive and important role on the Court. She was a major voice in criminal law and *Charter* cases, a contributor to foundational administrative law doctrine, and a judge whose votes mattered in many of the Court's most closely divided decisions.

Her successor will not simply fill a vacant seat. They will alter the composition of a nine-member institution in which small changes can matter, especially at the margins, and especially in cases where the law remains contested.