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Supreme Court Coverage in Canada: A Case Study of Media Coverage of the *Whatcott* Decision

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Abstract

Do Canadian media outlets report Supreme Court decisions in a legal or political frame? Starting with a review of how the media amplify court decisions, the study focuses on a case study regarding a freedom of speech decision of the Court. This study finds that although the media critically evaluated the freedom of speech case of William Whatcott, it did so from a legal frame. Unlike American research that shows the media increasingly interprets Supreme Court decisions from a political frame, this study on *Whatcott* finds that the media focused on the legal arguments of the case.

Key words

Political Communication; Law; Sociology; Supreme Court; Media Coverage; Civil Rights; Canada

Resumen

¿Los medios de comunicación canadienses informan sobre las decisiones de la Corte Suprema en un marco legal o político? A partir de una revisión de cómo los medios de comunicación amplifican las decisiones judiciales, el estudio se centra en un caso práctico sobre la libertad de expresión de las decisiones del tribunal. Este estudio revela que aunque los medios evaluaron críticamente la libertad de expresión en el caso de William Whatcott, se hizo en un marco legal. A diferencia de investigaciones estadounidenses que prueban que los medios de comunicación interpretan cada vez con mayor frecuencia las decisiones de la Corte desde un marco político, este estudio sobre *Whatcott* demuestra que los medios de comunicación se centraron en los argumentos legales del caso.

Palabras clave

Comunicación política; derecho; sociología; Corte Suprema; cobertura mediática; derechos civiles; Canadá

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1. Introduction

On February 27, 2013, the Supreme Court of Canada released a decision on hate speech. The decision was based on a human rights complaint made against William Whatcott in 2001 and 2002. Whatcott, a fundamentalist Christian, had distributed flyers to Saskatchewan residents condemning homosexuality and warning of a gay agenda permeating Saskatchewan schools. Four complaints were filed with the Saskatchewan Human rights tribunal based on the flyers disseminated by Whatcott. The Tribunal agreed with the complainant that the flyers contravened the provincial human rights code because:

> …they exposed persons to hatred and ridicule on the basis of their sexual orientation, and concluded that s. 14 of the *Code* was a reasonable restriction on Wright's rights to freedom of religion and expression guaranteed by ss. 2(*a*) and (*b*) of the *Charter* (Saskatchewan Human Rights Commission v. William Whatcott 2013).

The Court of Queen's Bench upheld the decision, but the Court of Appeal overturned it. The Supreme Court allowed the appeal in part. They ruled that although the human rights legislation limited freedom of expression, it was a reasonable limit to "reduce the harmful effects and social costs of discrimination." They held that two of the flyers were considered hate speech; the remaining two were not considered hate speech. They ordered Whatcott to pay a fine of $17,500 plus all legal fees. The *Whatcott* decision garnered significant media attention, as it dealt with fundamental rights of expression as well as harms to a minority group. Critics of the decision had anticipated a different result and were outraged that freedom of speech could be so limited.

April 17, 2012 marked the 30th anniversary of the Canadian *Charter of Rights and Freedoms*. In 2012, Environics published a poll which examined a number of Canadian institutions. Second only the public health care, the *Charter* was considered an important Canadian symbol for 73 percent of Canadians (Environics Institute 2012, p. 20). While in recent years the support for the *Charter* was strongest for younger Canadians and weakest amongst Quebeckers, it nonetheless has remained a powerful and meaningful institution for the vast majority. Despite the fact that the *Charter* remains popular across the country, it is a politically divisive institution. In political circles celebration for the *Charter* is a partisan affair. For example, during the 30th anniversary celebrations, only the Liberal Party of Canada marked the occasion with any special event hosting a $300 a plate dinner that featured former Prime Minister Jean Chretien, one of the *Charter's* architects. In contrast, both the NDP and the governing Conservatives choose to acknowledge the occasion with pro forma press releases.

Part of the divide regarding the *Charter* lies in the fact that the Supreme Court of Canada's interpretations of the document has been seen to be at the forefront of social change. In *The Court and the Charter: Leading Cases*, Thomas Bateman and his associates ask, "Is the *Charter* the cause of change in Canada or the effect of change?" (Bateman *et al*. 2008, p. 1). Their answer to the question is as follows:

> To understand the *Charter*, one must understand Canada and the political and cultural changes that it has experienced over the last century. To understand Canada, one must now understand the *Charter*, how it is interpreted, and what consequences *Charter* decisions have for litigants and the broader community (p. 2).

In other words, there appears to be a mutually enforcing bond between decisions of the Supreme Court and the public's adoption of new social values. However, those who oppose such social change, also oppose decisions of the courts that are perceived to be champions of those changes.

In this article I explore how the media report *Charter* decisions. The paper begins with an argument that those seeking social change turn to the courts in order to

gain legitimacy in public opinion. Whether or not the media examine Court decisions in the first place is examined, and second how those decisions are framed have a fundamental impact into the legitimacy of the Court and the change it often heralds. The paper examines how the Court is covered in general terms, and then examines the specific case study of the *Whatcott* decision.

2. The Court as a vehicle for social change

It has been well documented that groups seeking social change often turn to the courts to gain legitimacy. American scholars such as Gerald Rosenberg argue, "there is no doubt that the aim of modern litigation in the areas of civil rights, women's rights, and the like, is to produce significant social reform" (Rosenberg 1991, p. 5). Similarly Aryeh Neier links Court decisions and social protest movements, "[s]ince the early 1950s, the courts have been the most accessible and, often, the most effective instrument of government for bringing about the changes in public policy sought by social protest movements" (Neier 1981, p. 9). Prior to the adoption of the *Charter of Rights and Freedoms* court challenges were not a very effective avenue for change in Canada. Canadian courts were reluctant to strike down laws based on the *Canadian Bill of Rights.* Between the adoption of the Bill of Rights in 1960 and the *Charter* in 1982 there were 34 cases heard by the Supreme Court regarding the *Bill of Rights*. The rights claimants won in four of those cases and in one decision alone did the Court strike down the law (Bateman *et al*. 2008, p. 15). Since the adoption of the *Charter*, there has been a significant increase in the hearing of civil liberties cases. Prior to the *Charter*, civil liberties cases amount to about two percent of its docket between 1970 and 1983. From 1984 it has average eight percent of the court's docket (Songer 2008, p. 61). Moreover, between 1984 and 1999, 110 federal and provincial statutes were struck down by the Court (Songer 2008, p. 161). While some scholars note that this is a "small proportion of the Court's output" comprising fewer than four percent of all Supreme Court cases (Songer 2008), it nonetheless marks the fact that the courts have become part of the policy making process.

As is the case in the United States and other democracies such as Australia, the Court has been part of significant social reform (Rosenberg 1991, Schulz 2012). What is interesting about the reform and the Court is that apart from outspoken critics, Canadians on the whole have accepted the court decisions as reasonable, and have not objected to unelected judges making public policy. This follows American practice that illustrates that public opinion and Court decisions are linked (Lock 2000, Casillas *et al*. 2011). The same holds for Canada. The 2006 Canada Election Survey found that on the question of same sex marriage half of the respondents (50 percent) said that the Court should have the final say with only 33.5 percent indicating elected representatives. Some researchers argue that poll data such as this suggests that the direct relationship between Court decisions and public opinion is the result of changing social forces. As Rosenberg contends the Court acts when there is "political, social and economic conditions...supportive of change" (Rosenberg 1991, p. 31). His view is that judges are "gradualists" allowing for small changes before large ones. In other words, the Court solidifies and enhances existing public opinion and acts when legislatures are reluctant.

Others argue that the Court itself is a powerful institution that has the ability to both set the agenda—by the decision to hear some cases and not others—and by the way in which it rules on the cases it hears. When it comes to the question of equality rights, scholars such as Scott Matthews (2005) argue that the courts can affect public opinion. Matthews states that the Court provides a framing function of the issue. "First, the courts *framed* the issue as one of equal rights" (Matthews 2005, p. 842). The second impact, according to Matthews is that this framing had a "persuasive impact on Canadians" (Matthews 2005, p. 843). That certainly has been the case with homosexual rights cases in Canada. Starting with *M. v H*. the Court paved the way for the federal government to create same sex legislation.

However, that is not to say they did so with the stroke of a pen. The Court's power lies in the fact that it can take a gradual approach to social change. This has been aptly demonstrated with respect to same-sex legislation. In the Court's 1995 decision, *Egan and Nesbit v. Canada*, it ruled that there was an equality provision in the *Charter,* but that the federal government could choose how to apply same sex social security benefits. It took four more years for the Court to demand that "same-sex and opposite sex-couples receive the same legal treatment" (Matthews 2005, p. 849). As time progressed, "public opinion on gay marriage shifted dramatically, as attitudes became increasingly anchored in a value with deep roots in the Canadian polity: the liberal value of equality" (Matthews 2005, p. 842).

In order to have this kind of powerful effect on public opinion, the Court relies on the media to report and interpret their decisions. "The courts' and legislatures' framing and persuasive messages reach the mass public without politically significant alteration by the media" (Matthews 2005, p. 847). Using Canada Election study data Matthews examined the framing effect of the media on the issue of same sex marriage between 1993 and 2000. His analysis revealed that after major Court decisions on same sex marriage in Canada that support for gay marriage "increases by roughly 50 percent" (Matthews 2005, p. 856). Table 1 updates Matthews' research to 2008. This data shows that there has been a steady and consistent increase in support for same sex marriage since 2000. Whereas in 1993 only 11.5 percent of Canadians strongly agreed that homosexual couples should be allowed to be legally married, in 2004 that number increased to 27.9%. By 2008, the last time the question was asked in the Canada Election Survey, 37.3 percent of Canadians strongly agreed with the statement, and a further 26.1 percent indicated that they somewhat agreed. Thus, the minority position in 1993 became the majority position in 2008, 15 years later.

Table 1

Same-sex Marriage Support, 1993-2008 (CES)

	Homosexual couples (gays and lesbians) should be allowed to be legally married					
	1993	1997	2000	2004	2006	2008
Strongly Agree	11.55	8.6	21.09	27.9	32.3	37.3
Somewhat agree	25.83	28.67	11.26	24.9	25.9	26.1
Don't know	6.46	9.74	7.19	6.9	6.6	8.9
Somewhat disagree	13.69	19.1	11.26	10	10.2	7.4
Strongly disagree	42.47	33.9	31.26	30	25	20.2
N	3732	1838	3589	3138	3250	3689

Cell entries are percentages

While much can be attributed to the Court, the legislature in Canada has also been active in ensuring equality rights. The federal government enacted the Civil Marriage Act in 2005, in part as a consequence of the decision of the Court. However, it should be highlighted that simply because the Court suggests that there needs to be legislation does not necessarily mean that Parliament will do so. For example, Parliament has not been able to enact a law regarding abortion since the Court invalidated the Criminal Code provision criminalizing abortion as violating the *Charter* right of security of person in the *Morgentaler* decision. In the *Morgentaler* decision, the Court urged the government to create legislation that provided some legal limits to abortion that would not violate the provision in the *Charter*. Writing for the majority, Chief Justice Dickson argued, "…assuming Parliament can act, it must do so properly" (*R. v. Morgentaler* 1988). Subsequent governments have avoided the issue of abortion since 1989 when the Progressive Conservative government's legislation was defeated in the Senate.

The Court was instrumental in setting the agenda in terms of equality rights and many have argued that they pushed the government in the same direction (Smith 2002, p. 7-8) As Matthews states,

> A frenzy of legislative activity to implement the decision quickly followed federally and in Ontario, British Columbia, Quebec and Nova Scotia in the lead-up to the federal election in November 2000, with changes in Saskatchewan, Manitoba and Alberta not far behind…by 2000 a dominant, equality-rights frame of same-sex relationship recognition had been diffused to the Canadian public. Furthermore, necessarily, the Supreme Courts' position in favour of same-sex relationship recognition also likely to be diffused throughout Canada (Matthews 2005, p. 849).

The issue for the federal government was that not all provinces were apt to adopt same-sex marriage legislation. However, by invoking section 91(26) constitutional privilege on marriage and divorce, the federal government ensured that all provinces would fall under federal legislation.

3. Legitimizing or undermining the Court? The role of the media

It has been argued that the media play an important and vital role in legitimization of the Court in western democracies. As judges do not explain their decisions to the public, they rely almost exclusively on the media to report and interpret decisions (Haider-Markel *et al*. 2006). The consequences of this system affect both the legitimacy of the court and the way in which the court can influence public opinion on social and moral issues (Haider-Markel *et al*. 2006, Baird and Gangl 2006). This can have far reaching consequences that include the enforcement of court decisions (Davis 1994).

In the 1990s and early 2000s it seemed as though there was no end in sight to the heightened media attention and scrutiny of the Supreme Court. Sauvageau *et al*. (2006) argued: "Not only have Supreme Court of Canada justices felt the sharp end of the stick of media criticism, but there has been a sizable increase in media attention since the early 1990s" (Sauvageau *et al*. 2006, p. 9). To come to this conclusion they counted all stories appearing in a number of newspapers and found that coverage of the Supreme Court "has at least tripled since the early 1970s" (Sauvageau *et al*. 2006, p. 15). While they note that this is part of a larger trend, they also argue that the newly formed *National Post* played a large role in the heightened attention to the court. Founded by Conrad Black, Sauvageau and his colleagues argued that the newspaper "waged a fierce ideological crusade against what it saw as the power of unelected judges" (Sauvageau *et al*. 2006, p. 16). Sauvageau and his associates contend that editorialists attacked what they deemed judicial supremacy. While the authors acknowledge that the change in ownership of the *Post* may have "receded at least to some degree" coverage of the Court would continue because of the 24 hour news cycle (see also McCombs and Shaw 1972, Hester and Gibson 2007).

An update of their research suggests that the coverage of the Court may not be due to either owner control or the 24-hour news cycle. While Sauvageau and his associates put much stock into the ownership of the paper by Conrad Black, the paper itself has seen two owners since 2003. First, the paper was purchased by CanWest Global to increase their media empire. After CanWest over extended itself the paper was taken over by the Postmedia Network in 2010 (Potter 2014). As can be seen in Figure 1, there does not seem to be any correlation of the coverage of the courts with the change in ownership. Supreme Court stories declined well before Hollinger was sold to CanWest. During the next few years, coverage of the Court remained intense with well over 100 stories appearing annually. However, in 2009, the coverage dropped dramatically to less than 50. *For the Globe and Mail*, the pattern of coverage was also reduced around the same time period. Coverage of the Court increased again in 2011. Thus, while the demand for the 24-hour news

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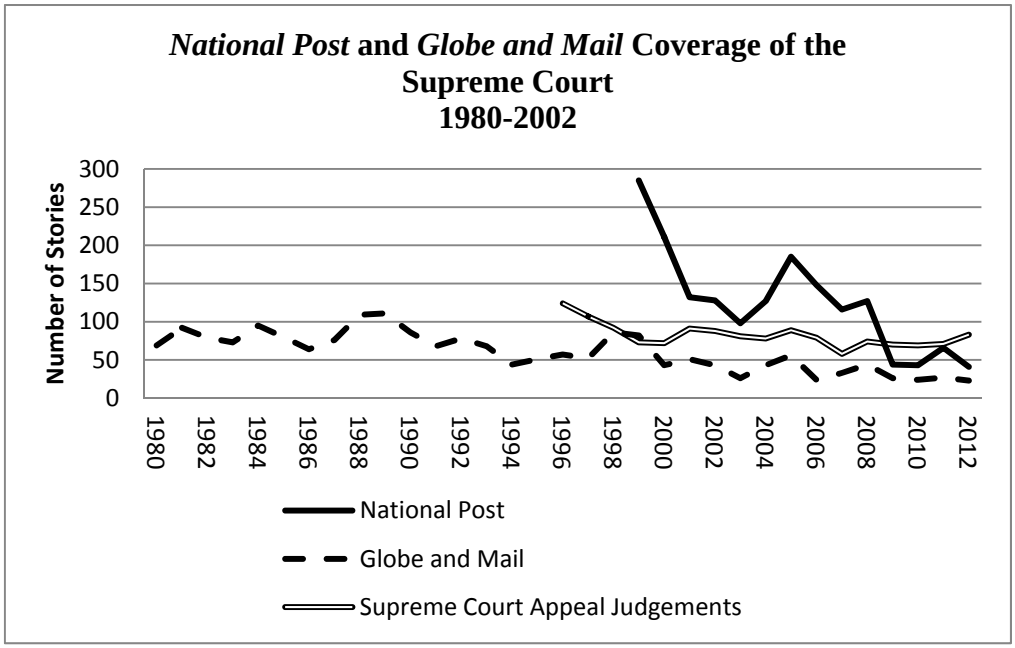
cycle is just as intense today as it was in 2006, something else must account for the focus on the Court. One explanation could be the actions of the Court itself.

Figure 1[1]



In any given year there are approximate 541 cases filed with the Supreme Court of Canada. Of those, the Court hears on average 76 cases year (Supreme Court of Canada 2013). This has been the average for the past 10 years, however before 2000, the Court rendered approximately 100 judgments per year (Bateman *et al*. 2008, p. 12). The reason for the change in volume of decisions is because the Court itself decides on which cases it will hear on appeal based on the 1975 *Supreme Court Act*:

> 40. (1) Subject to subsection (3), an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court (R.S.C. 1985)

One explanation for the decline in coverage of the Supreme Court decisions is the fact that the Court itself has made fewer decisions in the 2000s, than in the preceding decade (see Figure 1).

Yet only a small fraction of those cases ever warrant the attention of the press. The decision to hear a case is not articulated by the Court. Scholars have noted that cases will be heard when the issue has a national scope or if there is a new point of law (Bateman *et al*. 2008, Ryder and Hashmani 2010). Of the few studies on media coverage of the Court that have been conducted all conclude that coverage is limited to only the few sensational cases (see for example, Miljan and Cooper 2003, Sauvageau *et al*., 2006). Therefore, it can be simply stated that the reduction in

[1] Supreme Court data based on Appeal Judgments obtain from Supreme Court of Canada: Statistics 1996 to 2006, Bulletin of Proceedings: Special Edition and Supreme Court of Canada: Statistics 2002 to 2012. Newspaper Data based on keyword searches of Supreme Court in Canadian Newscan Complete.

stories on the Supreme Court of Canada over the past decade is related more to the fact that there has been a reduction in the Supreme Court workload than to any changes in media behaviour. While American research has shown that dissent on the bench may account for some of the coverage that has not been found to be the case in Canada (Miljan 2000). Indeed, the Canadian Supreme Court on average is three times as likely to have a unanimous as a split decision. Over the past ten years, on average the unanimous decisions have accounted for 72.5 percent of the cases heard (Supreme Court of Canada 2013).

What then makes a case media worthy? American scholars have suggested that it coverage of the Court depends on a number of factors: first, individual rights cases are more likely to be discussed (Katsh 1983). Of those the media tend to be interested in abortion, free press, free speech, and freedom of religion issues (Johnson and Socker 2012, Miljan 2000). "Cases that the legal community (i.e., based on rankings by entities such as the *Harvard Law Review*) deems influential do not always get picked up by television newscasts" (Johnson and Socker 2012, p. 437). Johnson and Socker identify three elements that affect Court decisions in the U.S.: actions, factions and interactions. They also state that the coverage itself can be divided into legal and political coverage. Just as the Supreme Court decides which cases it thinks are worthy of considering, so too do the media decide which of those decisions it thinks worthy of disseminating to the public at large (Johnson and Socker 2012, p. 455). While the research to date has indicated that the U.S. Supreme Court maintains its legitimacy because it is framed in legal terms, when the coverage becomes political, their position is undermined.

There are clearly two points of view regarding how media coverage relates to public opinion regarding court decisions. The position that has been reviewed thus far states simply that the Court and the media reinforce the movement toward social change. This view holds that the media tend to emphasize the absolute right of the victors in court proceedings and then impacts how society at large views these issues (Morton and Knopff 2000, p. 159). On the other hand, there are those who raise concerns that incomplete coverage of the Court, and the fact that the media tends to emphasize conflict, undermines the legitimacy of the institution itself. There is an underlying fear that vocal opposition to the Court's decisions on controversial subjects such as gay rights will affect the legitimacy of the Court (Hausegger and Riddell 2004, p. 43). Former Supreme Court Justice Frank Iacobucci made this point, "Decisions are enforced because people accept the decisions as the law. If confidence is eroded, then we worry about the legitimacy of the Court and the role of the Court to settle disputes through the rule of law in our country …" (as cited by Sauvageau *et al*. 2006, p. 10). This perspective argues that negative coverage can "undermine and subvert government elites and values" (Sauvageau *et al*. 2006, p. 10, see also Page 1996, Wolsfeld 1997, Cook 1998).

There seems to be little evidence of the second view. For example, in the U.S., Baird and Gangl test the effect of news reports on public evaluations of the Court. Their research demonstrates that because the Court is framed through the lens of legal considerations it has an advantage over political institutions (Baird and Gangl 2006).

> Our analyses confirm our expectations that the myth of legality, which is often bolstered by media coverage, is integral to widespread positive public regard for the Court relative to Congress. When people do not perceive legal decisions to dominate, they are less likely to voice positive attitudes toward the Court" (Baird and Gangl 2006, p. 607).

The first research question for this paper is how do Canadian media outlets frame the Court decisions, in a legal or political framework?

4. Does the media influence public opinion in the Internet age?

Before the question of how the Court is covered, a few comments should be made about how the media itself has changed with the popularity of the Internet. For the better part of the last century it was relatively easy to argue why the media mattered. Political communications scholars could point to the potential and actual effects of how the media informed, influenced, and shaped public opinion. Regardless of the topic: from domestic issues to international affairs; from day-to-day political manoeuvres in legislatures to the decisions of the Supreme Court; the media stood as the gatekeeper, recorder, and interpreter of what mattered, and in many cases, what did not matter.

Increasingly, however, the power of traditional media and its relevance in public affairs has been questioned. Social media, with the ease and accessibility of the Internet, as well as the on demand nature of modern communications, puts in doubt the ability for traditional mass news media to influence the public as it once did (Schulz 2013). However, despite the decline in traditional media outlets being able to provide detailed and nuanced coverage of many important public policy issues, I contend that they nonetheless, remain important gatekeepers for new media, and by extension, the public at large. One reason is that the public is still exposed to traditional media in their social networks by having traditional media stories reposted to sites such as Facebook, Twitter, or LinkedIn. Second, news organizations have embraced technological advances and provide teasers and links to their stories in social media networks. Thus newspapers, television, and radio continue their role as a "forum for the generation of shared values, as well as the processing of conflicting interests" (Bannerman 2011).

The challenge in this new era of digital media is the degree to which there is diversity in news reporting. According to K. Wirsig of the Canadian Media Guild, since 2008, over 3,000 journalism jobs have disappeared in Canada (Wirsig personal communication, 6 Sep 2012). As Timothy Cook (2006) observed, "the mass media have been downsized to the point that we can no longer talk about them in the same terms we used to, say, in the 1970s and 1980s" (Cook 2006, p. 160). The digital era has disrupted the business model that had been in place for over half a century. In the United States, the inflation adjusted estimate for 2012 annual newspaper advertising will be lower than in 1950 (Perry 2012). In Canada, newspaper advertising has declined as well and in neither country have online advertising sales increased to match the declines in traditional media. While readership, as measured by advertising revenue, may be one decline, the reach of traditional media is greater today than it was a decade ago. It is ironic then that the decline in revenue has resulted in a decline in journalists, as their reach is no longer limited to time or space. It is therefore, more important than ever to document what kind of information is presented to the public and the diversity of views that are expressed on matters of important public policy. This leads to the second research question for this paper: how diverse is the coverage of courts across the country?

5. Methods

To better understand the nature of the coverage of the Supreme Court and to answer the two main research questions this paper examines media coverage of the *Whatcott* decision. The decision was controversial because the Court agreed that freedom of speech should be limited. It therefore is a good candidate for a case study to because it received media attention across the country and it provides a test of whether the media supported or rejected the Court's decision. In order to examine the nature of the coverage: whether it was framed in legal or political terms; and to examine the diversity of opinion, the case study retrieved all stories appearing in mainstream Canadian newspapers, television and radio that were saved on searchable databases. Two databases were used: Newscan, which

provides regional and Sun media newspapers, as well as CBC and CTV television and radio; and Canadian Newstand Complete which provides the Postmedia newspapers. These two databases represent over 90 percent of the English daily newspapers and television programs in the country.

The databases were searched using "Whatcott" anywhere in the text from six months prior to May 1, 2013. This strategy ensured that stories, commentary, and opinion would capture coverage before and after the decision. The unit of analysis was the story. A simple content analysis was done by the author identifying the news organization, date, and author. The analysis noted whether the story agreed or disagreed with the decision, or provided the information from the case. Reasons for the opinion were also noted, as were instances of opinion in either direction. Stories were differentiated by news, opinion-editorial, and letters. Authors were identified by name.

6. Results

The average number of stories regarding the *Whatcott* decision in any given news organization was four. As was found by Sauvageau and his associates, the *National Post* lead the coverage with 27 stories, followed by the *Regina Leader Post* (12) and the *Saskatoon Star Phoenix* (11). The *Globe and Mail* had 10 stories. The *Ottawa Citizen* followed with eight and the *Toronto Star* had seven.

Examining all the papers individually would be misleading as most of the stories on the *Whatcott* decision in the chain papers were duplicates of those in the flagship newspapers. The Postmedia group had the highest diversity of coverage between newspapers. However syndicated columnists such as Andrew Coyne who appeared in the *National Post* were copied throughout the chain, the editorial board and local opinion writers penned articles discussing the decision.

Table 2

Top 6 Media outlets Covering *Whatcott*

	n	%
National Post	27	12.2
Regina Leader Post	12	5.4
Saskatoon Star Phoenix	11	5.0
The Globe and Mail	10	4.5
Ottawa Citizen	8	3.6
Toronto Star	7	3.2
All Other (combined)	75	67.1
Total	221	100

The Quebecor/Sunmedia group provided the least diversity of stories between newspapers. Stories and commentary were identical from one newspaper to the next. As can be seen in Table 3, Sunmedia columnists had far greater reach than those of the Postmedia chain in terms of the number of papers their columns appeared. Table 3 shows the top ten sources writing on *Whatcott.* While at first glance it appears that Sunmedia columnists were prolific, the numbers reflect the number of newspapers their opinions were printed. In other words, Alan Shanoff, who was reprinted in 21 of the Sunmedia papers, penned only one story. The same was the case for all the other columnists, with the exception of Andrew Coyne. Coyne was the only columnist who covered the case who wrote more than one column. In all, 83.9 percent of the reports were copied in several papers. Of the remaining 16.1 percent of stories, 78 percent were letters to the editor. This demonstrates a significant amount of power that a handful of reporters and columnists wield in the interpretation and coverage of the decision.

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Table 3

Top 10 Sources writing on *Whatcott*

	n	%
Alan Shanoff (Sun)	21	9.5
Lorne Gunter (Sun)	16	7.2
Brian Lilley (Sun)	15	6.8
Andrew Coyne (Postmedia)	15	6.8
Jessica Murphy (Sun)	14	6.3
Canadian Press	14	6.3
Robert Martin (Sun)	10	4.5
Editorial Staff (various)	7	3.2
Joseph Brean (Postmedia)	6	2.7
Lori Coolican (Postmedia)	6	2.7
Total	221	100

Opinion-editorials dominated the coverage. Overall, 55.7 percent of the coverage consisted of unsigned editorials, syndicated columns and guest opinion articles. There were also a fair number of letters written to the various newspapers comprising 13 percent of the coverage. As can be seen in Table 4, less than one-third of the coverage consisted of news stories. Most news organizations had more opinion than news with the majority penned by the Sun newspaper chain at 82.6 percent. CTVGlobe had the least. In part this is due to the fact that CTVGlobe includes television news programs such as *Canada AM*, *Powerplay with Don Martin*, and *CTV News*, none of which have an editorial component. The *Toronto Star* was unique in that it had as many letters as it did opinion-editorial stories. The smaller chains, which typically included more rural and remote markets, were the most likely to present just the news stories and not run editorials on the decision.

Table 4

Type of News by Ownership

	Owner											
	Postmedia		Sun		CTV Globe		Torstar		Other[2]		Total	
	n	%	n	%	n	%	n	%	n	%	n	%
News	26	31.7	14	16.3	5	38.5	1	14.3	23	69.7	69	31.2
Opinion-Editorial	40	48.8	71	82.6	2	15.4	3	42.9	7	21.2	123	55.7
Letter	16	19.5	1	1.2	6	46.2	3	42.9	3	9.1	29	13.1
Total	82	100	86	100	13	100	7	100	33	100	221	100

There were significant differences between news organizations regarding the opinions expressed about the decision. Only opinion-editorial and letters were coded on whether the author agreed or disagreed with the decision. News stories that recounted the facts of the case and reactions were simply coded as news. As can be seen in Table 5, The Sun newspaper chain had the highest proportion of editorialists and letter writers criticizing the decision (79.1 percent) with a mere 2.3 percent expressing agreement with the Supreme Court. Nearly half of the coverage (48.8 percent) in the Postmedia chain disagreed with the decision and only 19.5 percent was supportive of the Supreme Court. The CTV Globe group was slightly more likely to present criticism than praise as well. In contrast, The *Toronto Star*

[2] Other includes smaller chains that had less than 5 stories on the *Whatcott* decision: Transcontinental, Glacier Canadian News, Black Press, TC Media, Halifax Herald, Continental, Independents, F.P. Canadian Newspaper L.P. Brunswick News and the CBC.

was overwhelmingly in support of the decision with 71.4 percent of editorials and letters expressing approval.

Table 5

Editorial direction by Ownership

	Owner											
	Postmedia		Sun		CTV Globe		Torstar		Other[3]		Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Agree	16	19.5	2	2.3	3	23.1	5	71.4	4	12.1	30	13.6
Disagree	40	48.8	68	79.1	5	38.5	1	14.3	5	15.2	119	53.8
News	22	26.8	14	16.3	5	38.5	1	14.3	23	69.7	65	29.4
Ambiguous	4	4.9	2	2.3	0	0	0	0	1	3	7	7
Total	82	100	86	100	13	100	7	0	33	100	221	100

The concern of critics of the media is that the public's views of the Supreme Court are influenced by the coverage that they view in the news. Figure 3 presents the percentage of disagreement with the decision by news organization and compares the opinion editorials with the letters. This chart reveals considerable homogeneity between media and their consumers. The highest degree of homogeneity was within the Sun media newspaper chain. However, what is noteworthy here is that there was only one letter published in the chain regarding the decision. In contrast, the Postmedia group had 16 letters published with half disagreeing with the decision, and by extension, the majority of the columnists. At the same time, nearly three-quarters of the editorials disagreed with the Supreme Court. For the *Toronto Star*, all three of the editorials were in support of the decision, as were three-quarters of the letter writers. Unfortunately, the key question of whether the public were influenced by the editorials cannot be answered by conducting a content analysis. It is just as likely that the columnists and editorial writers cater their message to pre-existing public preferences as it is the public being influenced by the coverage. Indeed, there were many letters, especially within the Postmedia group that took issue with the way in which the columnist interpreted the decision. For example, in a letter published in the *National Post* on March 1, 2013, letter writer Marc Cote wrote of Andrew Coyne, "Mr. Coyne is not a stupid man, but he does seem to have a blind spot when it comes to free speech and the law. There are no absolutes in life and the right to free speech does not escape this natural law."

[3] Other includes smaller chains that had fewer than 5 stories on the *Whatcott* decision: Transcontinental, Glacier Canadian News, Black Press, TC Media, Halifax Herald, Continental, Independents, F.P. Canadian Newspaper L.P. Brunswick News and the CBC.

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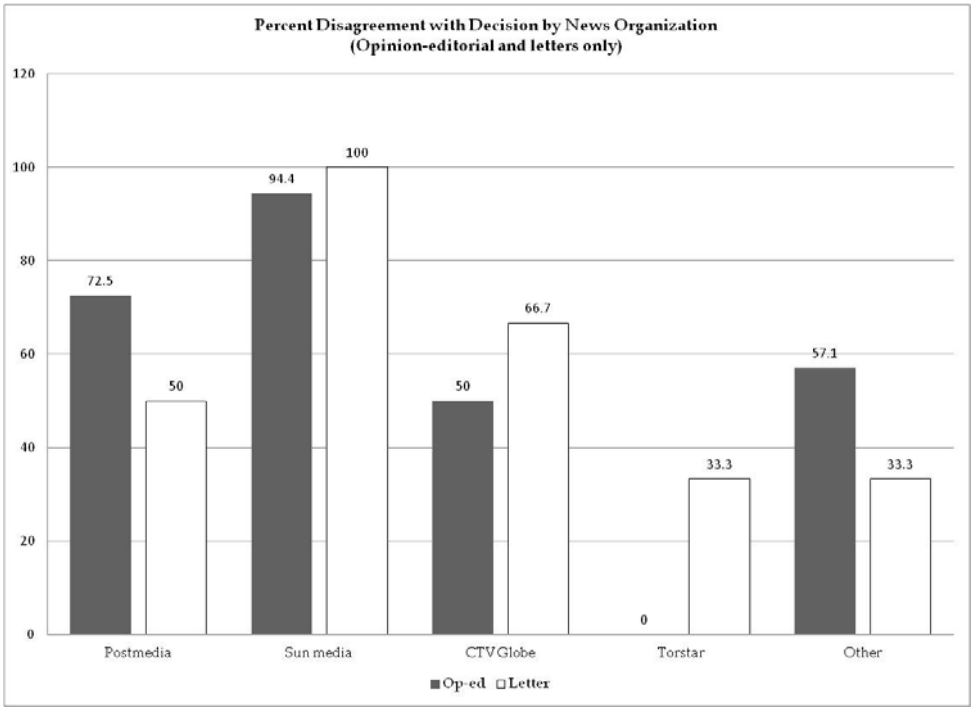
Figure 3



To answer the final question as to whether the *Whatcott* decision was framed in political or legal terms, analysis was done using the software Wordstat.[4] The dictionary used was the one developed by Johnson and Socker (2012). Despite the fact the coverage tended to criticize the Supreme Court, it was not framed as a political issue. The opponents, as well as the supporters, of the decision discussed the issue primarily in legal terms. Of the terms found, 93.4 percent were legal. The news organization with the lowest proportion was Sunmedia with 91.4% and the highest was the *Toronto Star* with no political terms used.

Table 6

Political and Legal Frames by Ownership

	Owner											
	Postmedia		Sun		CTV Globe		Torstar		Other		Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Political	13	6.3	27	8.7	1	7.7	0	0	3	2.4	44	6.6
Legal	194	93.7	287	91.4	12	92.3	12	100	120	97.6	625	93.4
Total	207	100	314	100	13	100	12	100	123	100	669	100

7. Discussion

Despite the argument that the judiciary is gradualist in its approach, on occasion it articulates a decision that results in outrage and indignation from the press. The

[4] The following terms were used for legal: acquittal, active, admissible, adr, affidavit, amicus, amicus curiae, appeal, arraignment, bail, bench trial, burden of proof, case file, case law, caseload, cause of action, chambers, charter, charter right, class action, clerk, constitutional, damages, de facto, de jure, de novo, discharge, discovery dismissal, due process, en banc, ex parte, exculpatory, felony, habeas corpus, hearsay, high bench, high court, in camera, inculpatory, injunction, judge, jurisdiction, jurisprudence, marble temple, moot, motion, original intent, original meaning, per curiam, precedent, preemptory, pro se, pro tem, probation, reasonable limits, remand, robes, statute, strict scrutiny, subpoena, tort, unanimous, unconstitutional, venue, warrant, and writ. Political terms included: biased coloured, doctrinaire, dogma, extremist, faction, ideological, ill advised, jingo, obstinate, one,sided partial, partisan, pervert, politicize, prejudice, prepossess, sect, unfair, unindifferent, unjust, unreasonable, warp, and zealot.

Whatcott decision certainly resulted in much criticism in several newspaper chains. The criticism was directed towards a number of key issues: the problem with human right's tribunals; concern over limiting free speech; the potential for penalizing speech that while promoting hate, did not promote or incite violence against marginalized groups; and the concern that freedom of religion might be constrained by reasonable limits on speech.

Using the *Whatcott* decision as a proxy for Canadian media coverage of Supreme Court decisions, this paper asked two research questions: 1. How diverse is the coverage of a court decision across the country? and, 2. How do Canadian media outlets frame court decisions, legally or politically? Two generalizations can be made about the diversity of coverage. First, while the *Whatcott* decision garnered a lot of attention throughout the country, the stories themselves were reprints of very few news stories or opinion-editorials. Differences in the assessment of the case could be seen according to the newspaper chain. The Sun and Postmedia chains lead the way in terms of criticism of the decision. The *Globe and Mail* was also critical, but it had just as many news stories as editorials. The *Toronto Star* was overwhelmingly in favour of the decision. Therefore there was diversity in opinion on the decision, but it was dependent on newspaper ownership.

Answering the second question, this study finds that despite the criticism it was framed primarily in legal terms, not in political terms. There was no mention of reforming the judicial system. There were no personal attacks on the judges. The only instance where a judge was questioned was in Karen Sellick's column where she wondered why the Chief Justice changed her position from a previous decision. The question, nonetheless, was occupied the legal framework rather than the political.

One school of thought argues that criticism of the Court can lead potentially to the erosion of trust for the Supreme Court. We have seen that on many social and moral issues Canadians remain more confident of the courts than of the legislatures. American research suggests that this is because the court is framed in legal terms. Thus, despite the criticism of the *Whatcott* decision, the frame remained legal and therefore it could be perceived by the public as more legitimate. Also of note is the finding that while opinion writers and editorialists noted with caution the potential problems with the decision, the majority of letter writers agreed with the Court.

This is not the first time that the Court has elicited strong media reaction against its decisions. As other studies have indicated, on controversial issues such as same sex rights, the courts are often criticized for going too far. However, with each decision they tend to move public opinion toward their point of view. As Michael Klarman notes "Frequently the Court takes a strong national consensus and imposes it on relatively isolated outliers" (Klarman 1996, p. 6). Time will tell whether opinion writers were the isolated outliers on the issue of hate speech.

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