JUSTICE IN THE SHADOWS? THE CHALLENGE TO MAINTAIN ROBUST MEDIA COVERAGE OF THE SUPREME COURT OF CANADA

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Janice Tibbetts is an associate professor of journalism at Carleton University, where she teaches justice reporting to aspiring journalists – including how to cover the Supreme Court. As a journalist, she covered the Supreme Court of Canada as a beat for *The Canadian Press* and *Postmedia News* from 1997 to 2011. During that time, she reported on hundreds of court decisions, including monumental rulings such as the legalization of cannabis and same-sex marriage, Quebec's right to separate from Canada, whether parents can spank their children, the parameters of private health care, and whether terror suspects can be deported to countries where they face torture.

The Supreme Court plays a monumental role in shaping Canadian society, yet media coverage is relatively sparse and rapidly dwindling. The situation leaves the public increasingly uninformed about a court that rules on some of the most pressing issues of our time.

Compared to their American counterparts, the nine Canadian judges work in relative obscurity. They walk the streets of Ottawa without recognition and a survey shows[1] the majority of the public are largely unfamiliar with their faces and know little about the court.

The reasons are many: shrinking newsrooms and news budgets; the court's restrictive method of accrediting journalists to cover its workings; complex subject matters that make it difficult for overstretched journalists to dip in and out; and a 43-year-old Charter of Rights and Freedoms that prompts fewer landmark decisions attracting intense media attention than in past decades.

The Supreme Court gives the Parliamentary Press Gallery in Ottawa the discretion to accredit journalists and most of those who gain accreditation are Parliament Hill reporters who prioritize politics. This leads to a disconnect in which political happenings are covered intensely, while watershed decisions of the Supreme Court attract some momentary

1 https://angusreid.org/wp-content/uploads/2024/11/2024.11.13_CAN_Supreme_Court.pdf

coverage, but more extensive reporting – such as critical analysis of issues and trends – is scarce.

Another reality for members of the Parliamentary Press Gallery is that political parties can be leaky ships, so there's typically more payoff for journalists to prioritize politics over the court. In short, it's easier to cultivate sources on the Hill, secure interviews and get "scoops" and other insider information that can lead to rewarding investigative work.

The Supreme Court, on the other hand, mainly speaks through its judgements. Interviews with the judges other than the chief justice have become increasingly rare in recent decades. The current chief justice, Richard Wagner, and his predecessor, Beverley McLachlin, have been the main voices for the court. Also, leaks from the Canadian Supreme Court are unheard of, unlike the high-profile 2022 leak of a U.S. Supreme Court draft opinion on abortion rights.[2] All of these impediments and disincentives add up to forcing a major time investment for already-stretched journalists to comprehensively cover the Supreme Court of Canada beyond occasional "news hits" arising from the court's agenda.

So the court gets short shrift from reporters who are assigned to cover the realm of "justice" from both a political and judicial perspective. In my experience, decisions with clear political implications were more likely to draw the attention of politics-first news bureaus and, even then, there was editorial pressure to focus on the political story instead of the legal questions surrounding a case. Issues involving pure political considerations or accusations of misbehaving judges also tend to draw even more attention, ranging from the 2014 Marc Nadon appointment[3] – which sparked a highly publicized spat between then-prime minister Stephen Harper and McLachlin, the chief justice at time. More recently, former Justice Russell Brown garnered widespread attention when he left the court in 2023 following accusations of inappropriate behaviour at an Arizona resort.[4]

When I was on the Supreme Court beat during the years when news outlets were more plentiful and better resourced than today, there was a core group of national reporters for mainstream organizations that watched the court closely. The media room at the Supreme Court on Wellington Street in Ottawa would overflow on Thursdays and sometimes Fridays, when decisions were (and continue to be) released at 9:45 a.m. sharp. There was competition among us to come up with stories beyond the routine agenda and we took pride in developing theme-related pieces that gave readers a big-picture view of legal trends or analytical examinations of the aftermath of decisions.

Even so, none of us covered the court full time; we also covered hectic Parliament Hill machinations that demanded most of our attention. In the 2006 scholarly book *The Last Word: Media Coverage of*

2 https://www.pbs.org/newshour/politics/what-the-supreme-court-found-in-their-roe-v-wade-leak-investigation

3 https://www.cbc.ca/news/politics/nadon-spat-between-harper-chief-justice-mclachlin-called-disturbing-1.2630896

4 https://www.canadianlawyermag.com/resources/professional-regulation/scc-judge-russell-brown-retiring-immediately-after-allegations-about-behaviour-at-arizona-resort/376677

the Supreme Court of Canada, named and unnamed judges lamented that media coverage lacks expertise on legal matters and reporting on decisions is so superficial that the reasons underlying court rulings are rarely or briefly reported. Some journalists interviewed for the book countered that the upside of Parliament Hill reporters covering the Supreme Court, as well, is that the reporter better understands the politics that can surround a case.

Another reason the Supreme Court began to draw more media attention in the late 1990s and early 2000s was that it emerged as a flash point in a newspaper war between the *Globe and Mail* and the then-upstart *National Post*, which took an editorial stand against what it decried as "judge-made law." The right-wing Reform party, and its successor the Canadian Alliance, were also frequent and fierce critics of the court and what they labelled the "judicial activism" of unelected judges striking down laws passed by elected politicians.

The heightened attention helped garner the Supreme Court of Canada the distinction of Time magazine's Canadian Newsmaker of the Year in 1999 – rare public recognition for the top court's role in shaping law and social policy with its landmark decisions that year on rights for the LGBTQ and Indigenous communities, as well as strengthened legal protection for sexual assault complainants.

Another factor leading to a higher profile Supreme Court in that era was that the chief justice through the 1990s was Antonio Lamer, a scrappy Montrealer who seemed to relish publicity. He would grant interviews liberally and passionately take on the court's critics.

Fast forward 25 years, and Chief Justice Robert Wagner is among those who have lamented reduced media coverage in the present era, which he has said is diminishing every year. At a news conference in September in Yellowknife, the chief justice reiterated his worry about the decline in the number of journalists covering the court at a time when misinformation is escalating.

Wagner's visit was part of a cross-country tour to five cities to mark the Supreme Court's 150th anniversary by promoting a better understanding of the court's role.

The tour is an element of an ongoing initiative by the Supreme Court to speak more directly to Canadians, in part because of the absence of robust media coverage. The court has also held hearings outside of Ottawa in recent years and started issuing one-page "cases in brief," written in plain language to accompany the public release of decisions. The court has also started hiring strategic communications advisors from media backgrounds, including former CBC journalist Alison Crawford, who worked in the chief justice's office from 2021 to 2023.

Wagner, at a gathering organized by the Canadian Bar Association in 2023, addressed the under-covered court and said an employee in his chambers was now tasked with calling journalists across the country to encourage them to cover cases that would be of interest to their audiences.

On top of more recent outreach to the public, the court also has a longstanding media-liaison committee in Ottawa, a well-equipped (and usually empty) media room in the Supreme Court building and an executive legal officer who fields calls from

journalists and provides media briefings on cases. However, the ELO is a senior lawyer whose main job is to act as a principal advisor to the chief justice.

The Supreme Court has also introduced other measures in past decades to make its proceedings more accessible for journalists. In 2004, after years of press-gallery lobbying, it became the first top court in the world in 2004 to hold "lockups" that permitted reporters to sift through the nuanced decisions for 45 minutes before they were released to the wider public, to better prepare them to immediately publish stories or go on live TV or radio within minutes of release time.

The court also was an early adopter of TV cameras in the courtroom and proceedings are broadcast on CPAC, the country's public affairs news channel. Journalists can sign up for news releases apprising them of pending leaves to appeal, decisions, hearings and other news. The court also posts agenda items frequently on social media.

Still, Canadians know little about the Supreme Court, according to a November 2024 Angus Reid survey of 1,600 adults. The non-profit institute reported that Canadians are less knowledgeable about their country's top court, in its "relative quietness," than Americans are of theirs. For example, most Americans could correctly identify at least two U.S. Supreme Court justices from a list containing three names of real justices and three "decoy" names. Only one-quarter of Canadians could do the same. Three in 10 couldn't identify any Supreme Court justices and 43% could identify only one of the correct options. On the other hand, just 22% of those surveyed said they believe Canada's Supreme Court is biased, compared to almost half of Americans who believe that about the U.S. Supreme Court. Canadians were divided on whether they have confidence in the court, but fewer than one-third of Americans reported feeling confident in their top court.

The findings track with what I have seen, anecdotally, among students enrolled in Carleton University's specialized reporting course on the Supreme Court. The aspiring journalists seem to know more on day one about the overshadowing, polarized U.S. Supreme Court than its Canadian equivalent. Only a few students can name a judge or a decision from the Supreme Court of Canada. The learning curve is steep, but they leave the course able to report on proceedings in plain language, read decisions and other court documents, examine an issue in-depth and identify the judges and key decisions since the advent of the 1982 Charter of Rights and Freedoms.

Like many journalism professors, I encourage students to seek out under-reported stories and to go to places where it isn't crowded with other media. This has led some students in my Supreme Court course to keep an eye on the institution when they become working journalists and even write about it from time to time – bucking the trend, perhaps, towards a top court that's increasingly out of the public spotlight.