## *THE LAST WORD: MEDIA COVERAGE OF THE SUPREME COURT OF CANADA*, FLORIAN SAUVAGEAU, DAVID SCHNEIDERMAN & DAVID TARAS (VANCOUVER: UNIVERSITY OF BRITISH COLUMBIA PRESS, 2006)

Anyone who has ever been involved in the business of news gathering and reporting in Canada, or who has been interviewed by news gatherers or reporters, will concur, perhaps cynically, with the concluding comments of *The Last Word*:[1] journalists control the message.[2] They and their editors/producers decide what is worthy of coverage, the extent of the coverage, and sometimes even the focus of a news story.

It is no secret that there is a growing tendency in the news media to focus on scandal and celebrity, something that feeds a public ravenous for such reporting. A CBC television producer once told me that scientific journalism would never be popular in television news, as those stories lacked "conflict." Reporters of judicial decisions usually have plenty of conflict to get excited about, but their inflammatory translations of complex, subtle reasoning may leave judges and lawyers regretful for not pursuing a career in chemistry.

The portrayal of the courts and the interpretation of their decisions by the news media constitute the fundamental foundation of *The Last Word*, which purports to examine the relationship between the Supreme Court of Canada and the Canadian news media by applying social science measurements to the coverage of four infamous cases from the Supreme Court of Canada during the late 1990s and early 2000s: the *Vriend* case[3] from Alberta, dealing with whether discrimination on the grounds of sexual orientation could be read into that province's human rights legislation; the *Quebec Secession Reference*;[4] the *Marshall* decisions[5] from Nova Scotia, dealing with Aboriginal fishing rights; and the *Sharpe* decision,[6] which interpreted the *Criminal Code*[7] provision prohibiting the possession of child pornography.

The book focuses on media coverage of the Supreme Court of Canada, but its indictment of the superficiality of reporting, including the media's frequent concentration on the notoriety of the parties, political sidetracking, and inability or unwillingness to examine the reasons behind a decision applies to all levels of courts. For example, in trial courts villains and victims have long been fodder for tabloids and the celebrity-focused broadcast media. The lofty Supreme Court of Canada, however, takes up an exclusive place in the public's (and hence the media's) consciousness and, as the authors demonstrate, has also had its fair share of notorious cases of late.

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1. Florian Sauvageau, David Schneiderman & David Taras, *The Last Word: Media Coverage of the Supreme Court of Canada* (Vancouver: University of British Columbia Press, 2006) [*The Last Word*].
2. *Ibid.* at 227.
3. *Vriend v. Alberta*, [1998] 1 S.C.R. 493 [*Vriend*].
4. *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 [*Quebec Secession Reference*].
5. *R. v. Marshall*, [1999] 3 S.C.R. 456; *R. v. Marshall*, [1999] 3 S.C.R. 533 [collectively, the *Marshall* decisions].
6. *R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45 [*Sharpe*].
7. R.S.C. 1985, c. C-46.

One such case is the *Sharpe* decision, one of the four cases examined by the authors in detail and one that is also the focus of the book's opening vignette. The vignette tracks the reporting of the Supreme Court's decision from its release on "judgment day" to its construction into various news stories.[8] There was an obvious media attraction to the story: depending on what the Court decided, the political fallout could be considerable. The authors construct a media room that is buzzing with anticipation, as camera crews, journalists, and worried Department of Justice officials scramble for positions amid the constant ringing of cell phones.

As it turned out, the Court unanimously upheld the provisions of the *Criminal Code* dealing with the possession of child pornography, but a majority of the justices also read in two exceptions to the law, relating to certain privately created works and recordings.[9] It became apparent that the furor over the case would subside. Critics of the lower courts' rulings could claim a "victory for children," whereas civil libertarians found relief in the Court's concerns about artistic expression. As described by a *Globe and Mail* headline, both sides could claim victory.[10]

Yet, an examination by the authors of the subsequent journalistic reporting, editorials, and opinions reveals a disturbing lack of understanding and interest in pursuing any thoughtful examination of the ruling. As the authors succinctly indicate, "[t]hough there was a great deal of interest in the case, there was not much interest in what the court specifically had to say."[11] It rapidly became evident that the conflict on which the news media apparently thrives, was resolved by the Court, with the result that television broadcasters became more interested in the hearing than in the decision itself. The authors found that newspaper journalists and editorialists largely characterized the decision as a victory against child pornographers. Ironically, institutions that had an inherent interest in defending freedom of expression placed little emphasis on the civil liberties aspects of the case.

As the authors note, two other decisions were handed down by the Supreme Court on the same day, an administrative law case[12] and a case dealing with whether a mentally challenged complainant had to be called as a witness in a criminal matter.[13] Neither received any appreciable media coverage. Further, even the news of the *Sharpe* decision, which lacked dramatic pictures and effectively eliminated potential outrage by upholding the possession of the child pornography provision, did not lead many newscasts that evening.

One of the most notable observations that is repeatedly manifested in the book relates to the degree and slant of media coverage in different parts of the country. For instance, and not surprisingly, the *Quebec Secession Reference* was greeted by some sovereignist commentators as a direct interference with Quebec's right to self-determination. But the subtleties of the Court's decision, which indicated that the rest of Canada would be

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[8] The authors provide a thorough reference to these various stories at the back of each chapter. In relation to *Sharpe*, see *The Last Word*, *supra* note 1 at 193-96.

[9] See generally *Sharpe*, *supra* note 6 at paras. 111-27.

[10] R. Mickelburgh & C. Freeze, "Both sides claim victory" *Globe and Mail* (27 January 2001) A4.

[11] *Supra* note 1 at 172.

[12] *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4, [2001] 1 S.C.R. 221.

[13] *R. v. Parrott*, 2001 SCC 3, [2001] 1 S.C.R. 178.

politically obliged to negotiate with a Quebec that voted to secede by a "clear majority on a clear question,"[14] was also interpreted by some in the Quebec media as a welcome new constitutional duty. Ironically, media reports throughout the country tended to focus on the interpretation of the case by political figures, often at the expense of the Court's legal conclusions that the secession of a province from Canada would require a constitutional amendment.[15]

The domestic geopolitical angles of media coverage are even more sharply demonstrated in the authors' evaluation of the media's treatment of the *Vriend* decision. Mr. Vriend filed a complaint against his employer under Alberta's human rights legislation,[16] but was denied a hearing because sexual orientation was not a prohibited ground of discrimination under the legislation. The case ultimately made its way to the Supreme Court of Canada, which read in sexual orientation to the list of prohibited grounds of discrimination in the Alberta legislation.

The authors conclude that reporting of the *Vriend* decision bifurcated into two principal directions: a provincial rights story, focused on the rights of provinces to choose the grounds of discrimination in their domestic legislation; and an "Alberta-as-deviant" approach, which highlighted Alberta's resistance to adopt social policy reforms that existed in most other provinces. The authors found that the former angle predominated in the coverage of the case in Alberta, where allegations of judicial activism were also frequently raised. The national media was more likely to adopt the latter angle in its reporting. In both cases, a political agenda, focused on Alberta Premier Ralph Klein, appeared to take over, to the extent that Mr. Vriend and his case disappeared from the media's radar.

In most instances, the authors impartially analyze the news media's performance, based on data such as the number of reports and the obvious slants and perspectives taken in the reportage. When criticisms are levied, they are balanced and usually supported by the evidence presented. However, in the authors' discussion of the *Marshall* decisions, they deviate somewhat from this approach and voice unusually strong condemnation of both the Supreme Court and the news media. The authors clearly feel that the Supreme Court harmed itself by choosing to subsequently clarify its decision that upheld Mi'kmaq Aboriginal treaty rights to fish.

After violence erupted in Maritime fishing communities between Mi'kmaq and non-Aboriginal fishermen following the release of the first *Marshall* decision, the Court responded to a motion for another hearing and attempted to clarify the limits of its earlier ruling. The reader is immediately struck by the authors' passionate analysis of these events. The examination of media coverage, although continually present, emerges as secondary to the authors' indignation over what they consider to be the Court's capitulation to public opinion. They further condemn the poor understanding of journalists reporting on the first *Marshall* decision as contributing to the tumult that followed. Such opinions may be warranted, even welcomed, as point-of-view discussion, but the authors fall short of

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[14] *Quebec Secession Reference*, *supra* note 4 at para. 100.

[15] *The Last Word*, *supra* note 1 at 116.

[16] *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-11.7.

justifying these conclusions on the basis of the social science research methodology that permeates their analysis of the other cases.

In fact, the treatment of this work as a research study often detracts from its readability. Although the discussion of the various media perspectives conclusively reveals a variety of media biases, simplifications, and strategic angles, the description of the social science data compiled by the authors to support their arguments interferes with the narrative and adds little to a common sense understanding of the information provided. For example, tabulating the degree of "tone" to a story necessarily involves a qualitative evaluation, notwithstanding the application of a confusing coding analysis to ascertain tone.[17] The tabulations of frequency of appearance of stories relating to the decisions discussed in different media outlets are more helpful, as they sometimes reveal regional disparities in coverage. Other tables present information that simply leaves the reader puzzled. For example, what is the relevance of the fact that in the coverage of the *Sharpe* decision, some media organizations used Mr. Sharpe as their first source quoted, whereas others used the majority court decision?[18]

The regular reference to "objective" data gathering results and analysis is recurrently used by the authors to support and corroborate their conclusions. Sometimes the data clearly substantiates the conclusions; sometimes it's a stretch. The prime difficulty with this approach is that it is not always possible to quantify what essentially is a qualitative examination. The information presented in the narrative frequently speaks for itself. Moreover, the authors are not always constrained from reaching subjective conclusions and opinions without the support of measured criteria. For example, the authors accuse the Supreme Court of playing to public opinion and responding to political pressure for revisiting the first *Marshall* decision,[19] and characterize much of the reporting of the *Sharpe* decision as "sensational" and "short-sighted."[20] These are inferences that one cannot logically reach by simply categorizing "tone" as positive, negative, or neutral.

The authors conclude the book with a chapter that decries the state of legal reporting.[21] They perceptively determine that political consequence and controversy dictate the extent of most legal reporting, including coverage of decisions from the Supreme Court of Canada. The authors observe that the paradigm for coverage of the Supreme Court is the parliamentary reporter, with no particular knowledge or interest in legal issues, in search of political controversy. Consequently, journalists treat the release of Supreme Court decisions as a political sideshow, focusing on winners and losers and conspicuously evading legal analysis or nuance.

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17 *The Last Word*, *supra* note 1, as described in Appendix B.
18 *Ibid.* at 176-77.
19 *Ibid.* at 165.
20 *Ibid.* at 172.
21 *Ibid.* at 227.

*The Last Word* should find an audience beyond academia. It is thoughtfully written, critically astute, and eminently readable when it does not become bogged down in methodology. One hopes that journalists and media organizations in Canada will form part of its readership.

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