AGENDA SETTING IN THE SUPREME COURT OF CANADA: A REPORT AND OVERVIEW OF A PROJECT IN PROGRESS

INTRODUCTION

The evolution of courts of final appeal into major policy making bodies depends critically on whether they can free themselves from the generally parochial demands and issues raised by litigants dissatisfied with the outcomes of their cases in the lower courts. Once high courts have discretion to pick and choose cases involving issues of interest to them, the courts have the ability to address more global legal questions of import to society at large. Agenda setting thus becomes a significant act of political authority. Agendas constitute a list of concerns and the priorities constrained by the need to ration time and resources. In assembling their agendas, a high court thus necessarily create winners and losers in this process. At the same time, the decision to hear some cases and not others imposes the court'a priorities on the politics of the country and its governmental institutions. A recent example in Canada illustrates the point. When the Supreme Court struck down a law passed by Parliament restricting cigarette advertising, it set off a sequence of actions and reactions that still reverberates over two years after the justices handed down their decision.

Research on agenda setting in the United States Supreme Court is extensive and rich. It began with a series of articles in the *Harvard Law Review* by then professor of law, Felix Frankfurter, who later became an Associate Justice of the Court, after the Judges' Bill of 1925 granted the Court control over its docket. Social scientists began to investigate the process in the late 1950s and there has been a steady stream of research since then.[1] Comparable research does not exist in Canada even though Canada's

[1] Useful surveys of this research can be found in Provine (1980) and in Perry (1991).