

by 1980-81, five years after the amendment was adopted, the percentage had grown to 74 percent (Bushnell 1982, 497). The proportion of cases on the Court's agenda that arrive there through leaves to appeal applications averaged 66 percent for the period 1987-1992. (In contrast, virtually all cases heard by the U.S. Supreme Court appear on its docket through petitions for certiorari.) Appeals as a matter of right in criminal cases thus continue to be an important segment of the Court's docket. Each term of the Court will also include one or two reference questions as well.

Entrenchment of Canada's Charter of Rights and Freedoms in 1982 further elevated the importance of the Court's decisions in the eyes of the public, the media, legal profession, and politicians (Knopff and Morton 1992). The Charter hastened the Court's transformation from an institution that for most of its existence had dealt with private law matters and "basked in relative obscurity" (Russell 1975) into an institution dealing primarily with public law matters.<sup>4</sup> Appeals involving the Charter of Rights and Freedoms generally come to the Court through the leave to appeal process, adding further saliency to the Court's agenda-setting process.

Canada's Supreme Court no longer can be described as a "captive court," tightly bound by tradition, precedent, and institutional restraints on its authority and autonomy (Bushnell 1992). Instead its position in Canada's legal system now approximates in many ways the more active, free-ranging role played by the Supreme Court in the United States. In both courts, deciding what to decide is pivotal to the policy process, and in both courts the discretion to choose is relatively unfettered by statutory restrictions or injunctions.

The 1975 amendment expanding the Court's discretion over the selection of appeals allows the Court generous room in making these decisions. According to the amendment, the decision depends on

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<sup>4</sup> According to Russell (1975), the Court's caseload prior to 1949 consisted primarily of tort, contract, and property cases with criminal and constitutional appeals making infrequent appearances before the Court. The caseload began to shift by the time of the Supreme Court Act was amended in 1975. The Court's current caseload is a mirror image of the 1949 docket with public law cases predominant. For example, in 1994, the Supreme Court's *Bulletin* reported that 24 percent of the appeals before the Court involved cases involving the Charter of Rights and Freedoms, 42 percent involved criminal law matters, and 3 percent pertained to constitutional questions, for a total of 69 percent of all of the appeals heard by the Court.