

**The Globe and Mail – May 10, 2006**

**There's nothing wrong with criticizing the Supreme Court**

**By Allan Hutchinson**

A Conservative MP has caused something of a tempest in a teapot with his comments on the Supreme Court of Canada's alleged penchant "to play the position of God." However, the ensuing brouhaha has merely served to emphasize the fragile status of the court and the double standards that seem to govern criticism of its judicial members.

Noting the hubristic tendency of Supreme Court judges, Saskatchewan MP Maurice Vellacott contended that Chief Justice Beverley McLachlin has "herself said actually when they step into this role that suddenly there's some kind of mystical power that comes over them, which everything that they've ever decreed is not to be questioned." Liberal Leader Bill Graham called the comments "absurd and politically motivated" and demanded that "this embarrassing member [apologize] to the Chief Justice and all the members of all the courts of our country." Prime Minister Stephen Harper partly obliged by immediately asserting that "the statements don't represent the position of the government."

There is much of significance to ponder in this admittedly trivial skirmish. Are the courts beyond criticism? Should MPs be confined to praise of judges? Is the Chief Justice in need of such political defence? And who exactly is "politically motivated?" In a democracy, it is imperative that judicial performance is the subject of vigorous questioning. If Supreme Court judges are to have such enormous power in, and over, Canadian democracy, it is essential to debate robustly their decisions, their reasoning, and their very status. We should encourage, not disparage as "embarrassing" those who have the guts to check any possible usurpations of power.

We need not agree with their particular criticisms, but we should not put the courts beyond the reach of debate or questioning.

Of course, this does not imply that mean-spirited or ad hominem assaults are warranted. Mr. Vellacott might well have crossed the line in falsely attributing particular views to the Chief Justice.

But it is surely in the very best spirit and traditions of democracy to chastise leaders who might be becoming intoxicated by their own authority, importance and wisdom. Supreme Court judgdom is not next to godliness.

And we need to remind ourselves constantly of that. Democrats are rightly wary of those who might be tempted to turn contingent privilege into divine revelation. For instance, few topics seem more pressing or pertinent for democracy than judicial activism -- whether judges do or should decide cases based on their own social biases and commitments or not. However, to propose that such a topic is off-limits or, even worse, can only be discussed furtively or fulsomely is to turn democratic ideals upside down. We need more, not less debate about such matters. And judges must not be immune from censure, even if it is occasionally harsh or ill-considered.

Judges are not delicate flowers who will wilt or snap in the face of critical gusts from politicians or whoever. Indeed, judges (or their political defenders) seem to want it both ways -- to speak out, as judges increasingly do, on matters of controversy, but to be free of inconvenient criticism. This is a perverse bargain especially when it is remembered that judges have the most secure tenure in all government -- they can preside until 75 and can only be removed by a vote of both the Senate and Commons.

Judges write long judgments that fill library shelves and the Chief Justice makes frequent public speeches. We can at least allow the citizenry to comment on them without fear of reprimand. After all, a privileged monologue of power, albeit phrased in the official accent of law, is anathema to democracy that ought to be more about a popular dialogue of engagement. If elected officials cannot comment on judges, then who can? So rave on, Mr. Vellacott, rave on. Do not be quieted by the politically correct Prime Minister or Opposition Leader. They are the ones who ought to be embarrassed. Chief Justice McLachlin and her colleagues neither need nor deserve any silent subservience from Canadians.

The price of relevance is the cost of complaint. The stifling of criticism signals the onset of democracy's debilitating illness.

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