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Subject: Black Rod to CBC: Gotcha

The Black Rod

<http://blackrod.blogspot.com/2006/05/black-rod-to-cbc-gotcha.html>

You could hear the excitement in CBC host Carole McNeil's voice as she introduced the exclusive story. She could hardly contain herself.

CBC had obtained the first "gotcha" in the War on Harper.

A Saskatchewan Conservative MP, Maurice Vellacott, had criticized the Chief Justice of the Supreme Court. The Judge, Beverley McLachlin, had fired back.

It was all "quite extraordinary" given the Prime Minister's desire to keep his caucus in check, said McNeil Sunday night.

Less extraordinary was the fact the CBC, in its rush to smear a Conservative MP and the Prime Minister, had missed the real story.

The Supreme Court spokesman had either lied or been misled by the Chief Justice when responding to Vellacott.

And The Black Rod has the proof. To the CBC --- Gotcha.

And we don't mean the fact the People's Network misspelled McLachlin's name on the CBC website version of the story.

To the CBC ---- it's not McLaughlin.

Nor do we mean how the CBC print story butchered the actual words Vellacott used, something inexcusable in an era when the interview is captured on videotape.

The Black Rod will use the true quotations, not the CBC versions.

On Saturday, MP Maurice Vellacott told CBC reporter Christina Lawand:

"I don't think it is the role, whether left or right, conservative or whatever stripe it happens to be, to actually figure that they play the position of God."

"Beverley McLachlin herself said actually that when they step into this role all of a sudden there's some mystical kind of power comes over them by which everything that they ever decree then is not to be questioned."

"They actually have the discerning and almost prophetic abilities to be able to plumb and know the mind of the public and take on almost these Godlike powers."

A spokesman for McLachlin rushed out a statement from her saying she “categorically denied” that she said the things Vellacott claimed she said. The CBC website carried the rest of the statement:

“She has always said it is a judge’s role to interpret and apply the law...but those choices are always made in accordance with legal precedents and with the laws laid down by Parliament and the legislatures.”

“Tory MP eats crow after ruffling judicial feathers” chortled the headline on the webpage.

If the CBC had wanted to do an accurate story, all Christina Lawand had to do was turn to the Web to read for herself what McLachlin actually said. The opinions Vellacott attributes to her are found in a speech she delivered in New Zealand last December.

The speech was titled “Unwritten Constitutional Principles: What is Going On?” You can read it for yourself at:

<http://www.eugenemeehan.com/english/speeches/UnwrittenConstitutionalPrinciples.pdf>

McLachlin told her N.Z. audience that judges must unearth the “unwritten principles” behind the laws of the land. It is their duty, then, to use these unwritten principles to supercede written laws whenever they see a discrepancy. They are not bound by legal precedents; they must create precedents.

The judge’s response to Vellacott is disingenuous. She relies on the fact that people won’t understand that her approach to the interpretation and application of the law is radically different from what they think her words mean.

Here’s a sampling of McLachlin’s worldview (emphasis ours) :

*“What is going on is the idea that there exist fundamental norms of justice so basic that they form part of the legal structure of governance and **must be upheld by the courts, whether or not they find expression in constitutional texts.**”*

*“...the legitimacy of the modern democratic state arguably depends on its adherence to fundamental norms **that transcend the law and executive action.**”*

*“The argument I have been advancing **may dispose of the suggestion that...it is inherently wrong for judges to rely on unwritten constitutional norms**, if constitutional is understood here in the sense of **an overriding principle that can invalidate laws and executive acts.**”*

*“It is sufficient that **the law provide a general idea** of what kind of result may ensue, and that the result, **once established by judicial rulings**, be justifiable in terms of what is written on the books and legal convention or usage.”*

“I conclude that while it is useful to articulate fundamental constitutional norms insofar as we can, the fact that a principle or its application does not take written form does not provide a principled reason for rejecting judicial reliance on it.”

*“There do indeed exist unwritten principles without which the law would become contradictory and self-defeating, and **it is the duty of judges not only to discover them, but also to apply them.**”*

Got it? Judges have a duty to find these unwritten principles and use them to override laws passed by elected officials whenever judges decide there's a conflict.

And since these principles are so sacred, once judges discover them, Parliament can never override the judges, because any law passed to do so would be ruled unconstitutional by the judges who discovered the unwritten principles in the first place.

How sweet it is, if you're a judge.
Almost...well....Godlike.

In fact, McLachlin even gives a nod in that direction. She declares herself a "modern natural law proponent."

Once upon a time, societies believed that legislation should strive to reflect God's natural law of right and wrong. Nowadays, God is out and natural law must be sought in the "history, values and culture of the nation."

"The contemporary concept of unwritten constitutional principles can be seen as a modern reincarnation of the ancient doctrines of natural law. Like those conceptions of justice, the identification of these principles seems to presuppose the existence of some kind of natural order. Unlike them, however, it does not fasten on theology as the source of the unwritten principles that transcend the exercise of state power."

And McLachlin even conceded that judges have a special power to plumb the mind of the public.

"Confronted with a new situation requiring a new norm, judges just look to the written constitution for the values that capture the ethos of the nation." Ethos, says the dictionary, is the characteristic spirit.

Further on, McLachlin writes that judges have to work hard to establish these unwritten principles that supercede written laws. "Determining whether these sources disclose such principles is quintessential judicial work." That is, it is the pure essence of what being a judge is.

"It is not making the law, but interpreting, reconciling and applying the law, thus fulfilling the judges's role as guarantor of the Constitution."

See, judges don't make law. They find law and then "reconcile" the laws passed by ordinary mortals with the universal truths that they, as judges, can see clearly but others can't.

Obviously the next time Parliamentarians get to question a judicial nominee, they should ask to see his or her skills at divining truth from the entrails of chickens.

Because McLachlin has given strong hints where her universal truths will be taking the laws of Canada whether Parliament agrees or not.

"...at the developing fringes of the new natural law, which goes by the name human rights, are other assertions. Not only should states not directly kill their citizens, they should avoid killing them indirectly by famine, medical neglect and degradation of the environment."

And....

“I believe that judges have the duty to insist that the legislative and executive branches of government conform to certain established and fundamental norms, even in times of trouble.”

So much for anti-terrorism laws, Stephen Harper.

It appears that Maurice Vellacott summarized the views of the Chief Justice pretty accurately.

And the CBC didn't do its job, unless that job involved a drive-by smear of a Conservative MP.

Note especially how the CBC describes Vellacott:

“...a former pastor who claims a doctoral degree from Trinity International University in Chicago...”

Should we read anything in the term “claims”? Do you think? Not that there's anything wrong with being an evangelical Christian, surely.

The CBC story failed to report the last time Vellacott made the news.

During the recent federal election, someone placed a call to a televised all-candidates forum and falsely accused Vellacott of sexual assault. The call was traced to the campaign office Liberal candidate Chris Axworthy.

This time, the baseless attempt to discredit Vellacott has unearthed a much larger problem that can be dealt with only by Prime Minister Stephen Harper taking action.

Either the Chief Justice misled her spokesman about the New Zealand speech, or the spokesman outright lied to the CBC and to people of Canada.

The people can have no confidence in the Chief Justice until she makes clear to Harper, whether she meant what she said in New Zealand, and resigns if she did and misled the CBC about it.

Then Harper should get a guarantee from all current justices that their decisions “are always made in accordance with legal precedents and with the laws laid down by Parliament and the legislatures”, and he should ensure judges are dissuaded from thinking Parliament can never override them.

Judges cannot rely on “unwritten principles” and create law without being held accountable to the citizens of Canada.

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