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Judges rule supreme

By Michael Coren

In case you wonder why Stephen Harper limits media access to his government, witness this week's attempt to skewer Saskatchewan MP Maurice Vellacott. The highly respected politician dared to tell the CBC that, "I don't think it is the role of the judge, whether left or right or conservative or whatever stripe, to actually figure to play the position of God." Then, speaking specifically of Supreme Court of Canada Chief Justice Beverley McLachlin, he said that "she herself said actually when they step into this role that suddenly there's some kind of mystical power that comes over them, with everything that they've ever decreed not to be questioned. "They actually have the discernment and almost prophetic ability to plumb and know the mind of the public."

This obviously touched a nerve. Vellacott has been obliged to resign from the chair of Parliament's aboriginal affairs committee and Chief Justice McLachlin's representative has officially denied that the judge ever said such things. The CBC in particular has magnified the comments to an extraordinary degree. Let us be entirely candid here. Vellacott is one of the most morally conservative and outspoken MPs in Canada. He is a former pastor, a powerful critic of gay marriage and abortion, and has been subject to some of the most extraordinary vitriol and even libellous attacks in his political career. Yet while his language was certainly flowery, it may not have been very far from the truth. Consider this quotation:

"The rule of law requires judges to uphold unwritten constitutional norms, even in the face of clearly enacted laws or hostile public opinion. I believe that judges have the duty to insist that legislative and executive branches of government confirm to certain established and fundamental norms, even in times of trouble."

The author? Chief Justice Beverley McLachlin. And the implication is clear. Judges have the right and the duty to make decisions that may be contrary to the laws of the land. Problem is, if public opinion, the law and the elected House of Commons are not to decide what these norms are, it obviously and clearly leaves that privilege to the Supreme Court. Giving judges on that court a status that is, yes, almost God-like. They might not become "mystical," but they do become mighty. More mighty than the democratic process. As for Vellacott claiming that they are not to be questioned, it is difficult to see where he is wrong. The decisions of Supreme Court judges are not overruled and often shape national policy.

Supreme Court Justice Rosalie Abella, for example, once wrote (in 1995, when she was on the Ontario Court of Appeal) of lowering the age of consent for male homosexuals to 14, saying the law as it stood "arbitrarily disadvantages gay men by denying to them until they are 18 a choice available at the age of 14 for those who are not gay, namely their choice of sexual expression with a consenting partner." Hardly a strict interpretation of law, but rather a personal statement of opinion and a political and sociological assumption based on, sorry Rosalie, an arbitrary moral standard. Soon after Rosalie Abella was appointed to the Supreme Court in 2004, of course, it told the government of Canada that opposition to gay marriage was unconstitutional – effectively forcing the hand of a Liberal party that had never once listed gay marriage as a policy and had in fact voted against it at all previous conventions.

Hold tight, Maurice. The truth always wins in the end, even in Canada.