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Supremes do have ‘god-like’ powers

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The late American humorist Franklin P. Jones once quipped that “honest criticism is hard to take, particularly from a relative, a friend, an acquaintance, or a stranger.” He could have added that honest criticism is not allowed at least in today’s Canada if you happen to be a robe-wearing member of the Supreme Court. For a body entrusted with upholding free speech supposedly enshrined in the Charter of Rights and Freedoms, the Supremes are quick to recoil in horror at the thought of anybody calling their omnipotence into question.

Witness last week’s media-generated furor over remarks by Saskatchewan Conservative MP Maurice Vellacott, who was forced out as chairman of the Commons aboriginal affairs committee, not for something he said about aboriginals, but for daring to suggest that Chief Justice Beverley McLachlin believes she and her fellow Supremes have almost “godlike powers.” The resulting assault against Vellacott by McLachlin, the media and the Liberals many of whom have made much stronger arguments against judicial activism without sparking any public controversy demonstrates beyond doubt that despite McLachlin’s angry counterattack against Vellacott, these unelected, unaccountable judges do indeed have godlike powers. It seems they are the only people in our system that are above criticism.

Ah yes, you say, McLachlin’s complaint was that she didn’t actually use the precise words ascribed to her by Vellacott. Indeed, she didn’t. But any fair and reasonable interpretation of her remarks from a controversial speech last year would conclude that Vellacott was not off base at all in suggesting that McLachlin sees herself in such a lofty way. The Chief Justice actually said that a judge must not be bound by the precise words of the Charter of Rights and, even in the face of hostile public opinion or direct opposition from elected representatives a judge must ride above that and establish “norms ... essential to the nation’s history, identity, values and legal system.”

Nobody else just judges are capable of deciding what these unwritten concepts are or should be. If that’s not “godlike,” then what is it? Vellacott who, being a fundamentalist Christian was already in the gun sights of the mainstream media and opposition Liberals simply uttered a concern which many Canadians share including this Canadian i.e. that unelected judges have far too much power. And the big concern is not particularly their role in interpreting laws that’s fair enough, since politicians obviously leave loose ends but in actually creating new laws, “reading in” as they call it, based not on what Parliaments or the public want, but on what they, in their extraordinary wisdom, deem to be appropriate. That’s what Vellacott was speaking about, and on that score, he was dead on, despite McLachlin’s extraordinarily political intervention to publicly condemn him for saying it.

This notion that judges who essentially are lawyers elevated to a large extent on the basis of partisan political considerations suddenly are brighter than everybody else, and instantly devoid of personal bias, is an absurd idea. A timely review of judicial appointees in REALity Magazine, a bimonthly publication of the conservative group REAL Women of Canada, for example, pointed out that recent appointments to the benches included former Liberal justice minister Irwin Cotler’s executive assistant and policy adviser, his former chief of staff and the wife of one of his close friends. It also included the former legal counsel to the Ontario Liberal Party, a former Liberal finance minister of New Brunswick, several defeated Liberal candidates, and so on. Now it may be that all of these people are quite remarkable in their own right. But the notion that these

people represent what McLachlin keeps championing i.e. protection against “political interference” is just downright silly. Not to mention wrong.

But even beyond the absurdity of McLachlin’s reaction to Vellacott and the made scramble by the media and the opposition Liberals to attack him for his views surely there is a far more fundamental value at play here. Even if you disagree with Vellacott. Even if you applaud judicial activism and believe that judges are, as they like to claim, above the cut and thrust of the public or the politicians, does it not upset you just a bit to think that we now appear to live under an autocratic Supreme Court which itself is above any criticism from those of us who admit to being mere mortals. Even if you think Vellacott’s concerns are dumb, doesn’t free speech include the right to say stupid things as well as brilliant things?

The fact that Vellacott had to quit as committee chair actually proves his point. If the Supremes didn’t have “godlike” powers, he’d still be there.