

Calire Hoy ? Not up to unelected judges

Much is made these days about our ?unelected and unaccountable? Senate having the authority to do whatever it is they do.

It is mainly on these grounds of so-called ?undemocratic? reality that many people want the Senate nuked.

Even Prime Minister Stephen Harper ? with his Reform Party roots ? has never been thrilled with the status quo, although several of his attempts to change it were met by fierce opposition from the other parties. His response? Send the whole mess to the Supreme Court and find out just exactly what power the federal government has to change the institution.

We do, after all, live in a society of laws, and it's useful to have the Supremes review the existing laws on the matter before attempting unilateral action.

Few would disagree with that approach.

Yet, when it comes to the courts themselves, where ?unelected and unaccountable? judges exercise considerably more power over the lives of ordinary Canadians than senators do, many simply shrug when judges step beyond their authority and rewrite the laws of the land.

The difference, some argue, is that senators are partisan and judges are not. Only Alice in Wonderland would buy that scenario.

Certainly they are partisan in different ways. Judges are not expected to openly support the leader of the party that appointed them the way senators usually do. And obviously judges don't sit in party caucus as senators do.

But judges are appointed to a large extent because of their political views. It is no accident that Liberal leaders tend to appoint Liberal judges, and Conservative leaders tend to appoint Conservative judges.

Even though they do not judge cases strictly on partisan grounds, their basic philosophy is consistent with what got them appointed to the bench in the first place, and it's from that political perspective that they view the world and the cases before them.

Which brings us to a spate of news stories about several judges across the country who object to the Victim Fine Surcharge, a mandatory law which dictates that anyone convicted must pay a fine ? \$100 for a summary offence, \$200 for an indictable offence ? which goes toward a fund to help victims of crime, a group which historically has been ignored in the judicial system.

The media, as you'd expect, tends to label this law as ?a Conservative law.? Well, it certainly was brought in by the Conservatives, but it was debated and approved in the Commons in the usual way ? albeit with Conservative support ? and is now, like untold thousands of laws, simply the law of the land, period.

But many liberal judges? both small and big ?L? it seems ? don't like it and are either refusing outright to impose it or simply making a mockery of it by reducing the charge to an absurd amount or giving a criminal decades to pay it.

You will recall the universal outrage ? still not completely subsided ? over news that a few senators improperly charged the public for their expenses. The general feeling is that they should be punished ? as they have been ? for trampling over the spirit and sometimes the letter of the laws governing such things.

Yet the general tenor of stories concerning judges who object to the victim's fines ? and indeed, those who object to other mandatory rules approved by Parliament ? is that they are somehow brave souls fighting for justice.

That is how Kitchener's Justice Colin Westman of the Ontario Court of Justice characterized himself to The Globe and Mail last week explaining his decisions to basically ignore the law ? in one case, for example, he fined a woman \$18 (\$9 for each of her convictions for violating a no-contact order with her husband) and gave her a year to pay.

The Globe cited University of Ottawa constitutional law expert Adam Dodek saying, ?Judges cannot pick and choose which laws they like and which they do not.?

?He's right,? Westman responded. ?In principle, what I'm doing is wrong. I have a duty and it's a sworn duty. But the greater principle is one of justice, and I take comfort that, in the scheme of things, it's more important to stand up for what is just.?

So what, exactly, makes Westman ? appointed to the bench in 1990 by Liberal premier David Peterson ? the sole arbiter of ?justice??

He may not like this law. Those found guilty of crimes may not like it either. But for the victims of crime, ?justice? includes helping them recover from crime. And if judges won't respect the law, why should your average citizen?

It's the old story. One person's justice is another person's injustice.

But it's not up to an unelected judge to determine. That's Parliament's job.

