

National Affairs, by Claire Hoy ? Predictable report shrugged off

I must have missed the memo.

Until earlier this year, when Prime Minister Stephen Harper and Justice Minister Peter MacKay publicly criticized Supreme Court Chief Justice Beverly McLachlin, I had no idea that our unelected and unaccountable Supremes were omnipotent.

Oh sure, we're all aware of the prevailing view in the law profession and the mainstream media that judges magically lose their personal biases the moment they're elevated to the bench. (This is particularly true of Liberal appointees, apparently; less true of Conservative appointees. But there you are.)

And many Canadians ? to my amazement I admit ? somehow think that judges should have more say than our elected politicians and that somehow judicial decisions are more democratic than political decisions. Beats me, but it seems to be a widely held view.

The notion that judges set aside their own personal experiences and views when rendering decision is, to this writer at least, totally absurd. Nobody does that.

The best anybody can aim for is fairness and balance, but the fact of the matter is everybody views the world through their own prism and there's no way anybody can wipe their brains clean and approach issues from a completely unbiased perspective.

In any event, you may recall that when Harper chose Justice Marc Nadon to fill a vacancy on the Supreme Court there was an immediate hue and cry from the Quebec legal community, many of whom were outraged that Nadon, who was from Quebec but practised in Ontario, was essentially not Quebec-enough to represent that province on the court.

Ultimately, the matter was brought before the Supreme Court itself ? clearly a direct conflict of interest since they were being asked to rule on a matter affecting who would join them in the court (but then, that's okay, because, as we mentioned earlier, the Supremes are untainted by normal human biases and can rule absolutely on strict merits without so much as a hint of self-interest.)

The court ? rather predictably ? ruled that Nadon wasn't eligible and Harper has since moved on with another appointment.

However, during the process leading up to the Nadon affair it seems the Sainted McLachlin phoned MacKay to warn him that there could be a legal problem with his proposed lists of new appointments, an action both Harper and MacKay characterized as inappropriate, suggesting it was tantamount to McLachlin lobbying the government.

Well, that was just too much for most of the Canadian law profession. The thought that a Supreme could possibly be anything but pure as the driven snow is really too horrible to contemplate and most demanded that Harper and MacKay slit their own throats and throw themselves into the Rideau River for daring to question the motives of the Sainted McLachlin.

Then, after a flurry of outrage with the legal profession circling the wagons ? as most professions tend to do ? a gang of law professors took the matter to the Geneva-based International Commission of Jurists ? not just the ICJ, but the ?respected? ICJ according to a Star ?news? story; respected by themselves to be sure.

This group, set up in 1952 as an advocacy group for the legal eagles ? which guarantees it will be fair, balanced and unbiased at all times about all things ? subsequently released a report on the matter and ? surprise, surprise ? demanded that both Harper and MacKay apologize for daring to diminish the Sainted status of McLachlin by suggesting she is capable of anything but complete and utter purity of thought and action.

The IJC said it considers the criticism of McLachlin ?was not well-founded and amounted to an encroachment upon the independence of the Chief Justice. Apparently she and her colleagues haven't been encroached upon too much since almost every recent decision they've made has gone against things the elected government of the country has tried to do. But there you are.

For their part, the Prime Minister's Office didn't even reply to the IJC's request for an explanation ? to their credit, I say ? and simply shrugged at news of the predictable report.

It is true that politicians of all stripes and at all levels are often untrustworthy ? although not always ? and do things that tick off a lot of people.

But, unlike appointed judges, we can boot them out when they misbehave.

And if judges really can't handle some mild criticism from the elected government, it makes you wonder how they possibly relate to the day-to-day concerns of those of us who do not get to share each other's bathwater in the lofty heights of judicial purity.

