

**Subject:** [Fwd: Fw: Judicial activism, Canada style - Why bother voting?]

**Date:** Wed, 07 Dec 2005 15:19:09 -0800

**From:** Brian Platts <bplatts@shaw.ca>

**To:** Corrie Kost <kost@triumf.ca>

----- Original Message -----

**Subject:** Fw: Judicial activism, Canada style - Why bother voting?

**Date:** Tue, 06 Dec 2005 14:09:56 -0800

**From:** M E Craver <mecraver@shaw.ca>

**To:** "FONVCA (E-mail)" <fonvca@fonvca.org>

An interesting piece! Food for thought. --Monica Craver--

----- Original Message -----

**From:** [Robert A. Jason](#)

**To:** [RJ](#)

**Sent:** Tuesday, December 06, 2005 10:41 AM

**Subject:** Judicial activism, Canada style - Why bother voting?

**Judicial activism, Madame Justice Beverly McLachlin**

**Why bother voting?**

*by Klaus Rohrich*

**Tuesday, December 6, 2005**

I am a great believer in the democratic process, but a recent news items gave me cause to wonder why anyone should bother voting. I am referring to a speech made recently by Madame Justice Beverly McLachlin, Chief Justice of the Supreme Court of Canada. Speaking to law students at Victoria University in Wellington, New Zealand, Ms McLachlin said that judges should feel "emboldened" to trump the written constitution, when protecting fundamental rights that may not be enshrined in a formal document.

The significance of this is that the good judge has served notice on the parliament of Canada that no matter what laws they enact; the ultimate lawmaker in Canada will be the Court. Ms. McLachlin believes that a written constitution, such as our own Charter of Rights and Freedoms, can become obsolete with the changing of societal norms. As such, she believes that it is the judiciary's responsibility to ensure that "norms that are essential to a nation's history, identity, values and legal system" continue to be upheld, written legislation notwithstanding.

While her speech is by no means the opening salvo of a battle that is taking shape between Canada's legislative and judicial branches, it clearly states that judges trump parliament in ensuring "individuals rights" and supporting societal evolution. While I am sure that Madam Justice McLachlin, who was recently appointed to her post by Prime Minister Paul Martin, is totally benign in her wish to ensure that the judiciary protect future rights of individuals whose predilections may not be covered by our current version of the Charter of Rights, she does open a can of worms that in my opinion could wreak potential havoc with human rights, all in the name of human rights.

The dangerous part of her desire to protect people's ability to enjoy freedoms that may not necessarily be enshrined in a current written form is that history has shown that quite often nations and societies undergo massive political changes of far reaching consequences. A judicial precedent that ensures this type of change is legal truly scares the hell out of me.

Having read William Shirer's excellent book, *The Rise and Fall of the Third Reich*, I am acutely aware how easily the judiciary can become a tool of repression. Hitler utilized legions of lawyers and judges to complete the Nazi Party's assumption of total power over the German people. It doesn't take a stretch of the imagination to visualize how a fluid judiciary not bound to follow written law, can make such a disastrous societal change possible.

Society is best served when everyone is equal under the law and the law is clearly laid out in black and white. While Parliament has been complicit in declaring certain citizens of Canada, such as native aboriginals, to have more rights than others, those voting have nevertheless been chosen by the people. Supreme Court judges are chosen by the prime minister, which given the wrong prime minister, can be a scary thought. This trend, if allowed to continue will further add to the so-called "democratic deficit" and will only serve to erode the rights of the majority in favor of minorities.

While minority rights need to be protected, they are best protected by written laws enacted by the people's representatives and not judges appointed by one man. To allow judges to interpret laws according to their own predilections and not written laws amounts to a judicial coup d' etat. And judicial juntas are likely no more benign than military juntas and pose an equal threat to a nation's freedom.

If this is indeed the way the future is shaping up, then there really is no point in voting.

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<http://www.canadafreepress.com/2005/klaus120605.htm>