



Communiqué



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What should our Supreme Court be?

There is much dispute among jurists about the ideal function of a supreme court. U.S. Supreme Court Justice Antonin Scalia, in a speech to a think tank in Puerto Rico in February of this year, criticized those who believe in a “living” constitution. “You would have to be an idiot to believe that,” Scalia said.

Canada’s Chief Justice, Beverly McLoughlin, however, has often described Canada’s Constitution as “a living tree”; and last December, speaking at a law school in New Zealand, she urged judges around the world to be much more aggressive in promoting their concept of rights “...no matter what the Constitution or the law may say.”

“The Constitution is *not* a living organism,” insists Justice Scalia. “It is a legal document. It says some things, and doesn’t say other things.”

Proponents of the “living constitution” idea — now dominant among the postmodernist-trained faculty of our law schools — want matters to be decided “not by the people, but by the justices of the Supreme Court,” Justice Scalia claims.

“They are not looking for legal flexibility; they’re looking for rigidity. Whether it’s the ‘right’ to abortion or the ‘right’ to homosexual activity, they want that right to be... unchangeable,” he said.

For several years, the CHP has urged Parliament to make Canada’s courts accountable to the Constitution, and has proposed legislation that would achieve this without impairing the important value of judicial independence. Although both the last two Liberal governments and their Official Opposition ignored the CHP’s proposal at the time, two members of the new Conservative Cabinet — Public Safety Minister Stockwell Day and Agriculture Minister Chuck Strahl — have indicated interest in the idea.

It is our view that the Constitution must not be seen as “a living tree”, for that would leave the nation with no fixed bearings. Instead, a constitution is to be more like the keel on a ship: regardless of changes in winds and weather, it helps keep the ship of state moving in the right direction.