

It's an exciting time of the year, Spring bursting forth and activist time again. In the process of evaluating the many essays submitted for the *Father Ted Colleton Scholarship*, it was noticed how very involved these young people are in their respective schools and the wider community. The self-profiles and letters of reference reveal candidates who are leaders and active participants in their community.

This edition of *The Interim Plus* highlights some of the representative excerpts from the essays. The insights are incisive. The analogies are creative. The excerpts demonstrate thoughtful and impressive reflection on life issues. These writings are reason to celebrate the young protagonists.

The other major themes in this supplement are the ongoing controversy associated with the administration of justice and the ever worsening population crisis in Canada. Criticism of the judicial system is often in the news. Recently a change was enacted relative to the selection process for judicial appointments. Several major newspapers weighed in with articles and editorials commenting on the role of judges, the process for their appointment, and the need for reform. At the same time highlights from the 2006 Census were released by Statistics Canada.

Part I Young People's Views on Abortion

The topic for the essay portion of the 2006 Father Ted Colleton Scholarship Program was:

"Is abortion the most important human rights issue of our day?"

The topic elicited numerous responses. In fact, almost 100 students took the time and trouble to offer their views in writing. Here is what they had to say:

Abortion is the most important human rights issue of our day as it contributes to dangerously declining birth rates of the developed world because of the sentiments it imparts to the population, and the sheer number of persons it eliminates. These declining birthrates will destroy countries' populations and economies. **Andrew Moir**

Abortion tears down the dignity of all of humanity.... If the innocent are devalued and they are destroyed, how can society respect the rest of humanity who are imperfect? **Janelle Brodner**

But there is a more insidious aspect to [abortion]. It inevitably leads to the creation and existence of a subclass of humans; those less preferable. It allows for the poor, the sick and the lame to be terminated in the womb and, as a result it de-humanizes the poor and disabled outside the womb. **Jennifer Koch**

Many argue that abortion is a form of technology that should be taken advantage of because we are told to live in the now and not in the past. **Kaitland Ridenour**

There is no doubt that abortion ruins lives yet it is often forgotten just how many others may be severely damaged. **Desiree Lalonde**

One act of evil begets so many more scenarios of sadness and desperation. **Emma Cey**

If we think we should have the right to live, we must give that right to others. **Amy Jung**

If there were serial killers, killing an incredible number of humans every day, the country would do anything to stop them. Yet, what is being done to stop the vast amounts of humans being killed by abortion? **Miriam Connolly**

Abortion doesn't just involve one or two people; it involves a whole community. Ideas and mind-sets, such as these have the ability to change our ideas, mind-sets or the structures of our families and economical structure of the future. **Adaisha Benn**

Human life is invaluable. It needs to be respected and defended. A baby who cannot stand up and say why it deserves to be alive needs people who value life to defend it. **Emily Austin**

The concept of placing the good of others before your own is primarily reflected in the family. Abortion is an attack on the family in that it promotes selfishness at the expense of others. If society was modeled after this standard, there would be no human rights, because there would be no concern for anyone outside of ourselves. What is described as a "choice" to promote "freedom" is in reality robbing us of our freedom, because we become slaves to our own selfishness. **Elizabeth Bernier**

It is sad to think that there are more laws on property and land than there are on the unborn. **Amanda Bernardo**

When consenting to an abortion the mother is authorizing her child's death. **Suzie De Luca**

Since 1973 at least 40 million abortions have been performed globally each year. That means 160 million men, women and grandparents each year have been touched by an abortion whether they know it or not. **Katherine Phibbs**

Although a higher standard of living has been reached than ever before, the moral and ethical values of society have greatly deteriorated with the selfishness that wealth brings. Abortion is evidence of this, as the importance of familial happiness and care for the other has been superseded by the immediate needs of the self. **Kevin Ku**

The issue of abortion has been commonly referred to

as choice. But it is merely the choice not to love, not to respect, and not to trust in the Lord. We pride ourselves on our inventions, our technology, and the obstacles we overcome as a species, yet we cannot handle a baby being conceived unexpectedly. **Victoria Kennedy**

Calloused consciences and the commonality of abortion have numbed our society to the sting of abortion. **Maria Noorloos**

Now that I have seen more of the world, and even of our own society, I see a false god who has gained a tremendous following. I believe every time someone has an abortion or recommends it to someone else, they are making an offering to this false god called convenience. **John Denny**

Never before in history has an ongoing genocide like that of abortion been permitted to continue without intervention. **Anna Brenner**

In North America especially, we will choose our job, our luxuries, our foreign made cars over the inconvenience of a child. A Beamer over a baby. Mother Teresa once said: It is a poverty to decide that a child must die just so that you may live as you wish." **Josh Fudge**

Part of a human's role in nature is to reproduce to ensure the survival of the human race. It is not a matter of choice for one to allow for the full development and safe birth of a baby, it is natural part of human survival, ingrained in our biological make-up from the beginning of our creation. **Elizabeth Suen**

When abortion is accepted, or even tolerated, human life is reduced from being valued and sacred to being unnecessary and unwanted. This perception of human life is unacceptable. As a result the basic function of the family begins to break down. **Sylvia Broschinski**

It is impossible to eliminate every problem at once; thus, it is important to determine which issue is the greatest problem, in terms of urgency and devastation, and requiring the greatest opposition. **Dave Weber**

Abortion is the most important human rights issue of our day because it victimizes the defenseless, is allowed by the law, and carries the potential to further violate human rights and demoralize society. **Adam Pittman**

We have become a society so dependant on material objects that we've forgotten the meaning of things that really matter. Families are slowly disappearing because no one wants to take care of a baby...An abortion is an easy way out. It 's the street that leads us to an even more selfish way of life. We can partake in sacred acts meant for marriage and get rid of the proof at the snap of a finger. **Judy Lazaro**

When the unborn child poses a risk to the mother's life, it could be deemed unconstitutional to deny an abortion. However, when this is not the case, carrying a child poses no risk to the security of the person. Abortion therefore, dangerously undermines the public understanding and perception of human rights. Common comprehension of the law surrounding abortion suggests a Charter of Rights where the supreme good is deemed to be selfish and per-

sonal, rather than universal and just. **Ryan Duran**

Abortion is a pandemic that has yet to be seen as a deadly disease, which causes it to seep through society as a common cold. **Stephanie Williams**

I fail to see how a baby that is five months old and within a mother's womb has no rights, but a baby who is in the same age and is born early is entitled to all human rights. **Mary Beth James**

Humans are desensitized by all the hate and disrespect for morals witnessed around them everyday, both in society and the media. It is as if eliminating a child is as simple and typical as eliminating dust from a rug. **Amber Southwick**



The human person indeed possesses other natural rights, such as liberty and private property, but the right to life is prior to them all because without it these other rights could not possibly be exercised. Liberty and property are not much good if one is dead. **Derek Remus**

Abortion is the most important human rights issue of our day because it is the termination of the most fundamental human relationship. **Heather Mason**

Questions

1. What reasons are given for concluding that abortion is the most important human rights issue today?
2. List the economic reasons for this conclusion
3. List the social reasons for that point of view.
4. List the ethical reasons for that thesis.
5. List the moral/religious reasons for the argument.
6. Which set of arguments are the most compelling? Why?
7. Could these statements be used for class discussion purposes? How?

Part II

Canada's Population Crisis

This site is the official site of the Canadian government agency reporting on Canadian statistics in all fields. Of particular note for this curriculum supplement is the material pertaining to the latest demographic numbers. The statistics reveal patterns re: birthrate; population growth; aging; spread of age groups; shifts of population within the country; immigration; internal mobility and migration; urban/rural changes; etc. There are many statistics in the 2006 Census report. Only a few are cited here. For a full overview consult the web sites below.

Between 2001 and 2006, Canada's population grew by 1.6 million, which translates to a growth rate of 5.4%.

An increase in international immigration was responsible for the acceleration of Canada's growth rate over

the last five years. Since 2001, an average of about 240,000 newcomers have arrived in Canada each year, for a total of some 1.2 million immigrants in five years. Roughly two-thirds of Canada's population growth now comes from net international migration.

The remaining one-third of the population gain is due to natural increase, the growth that results from there being more births than deaths. However, natural increase is becoming less important as a factor in population growth for two reasons: Canadian fertility has remained at about 1.5 children per woman for the last 10 years, and the population is aging, which means the annual number of deaths is increasing. According to population projections, net immigration may become the only source of population growth by about 2030.

<http://cansim2.statcan.ca/cgi-win/cnsmegi.pgm?Lang=E&ResultTemplate=Srch2&ORCmd=GetTList&CORId=3867>

<http://www12.statcan.ca/english/census/index.cfm>

50 years of population change

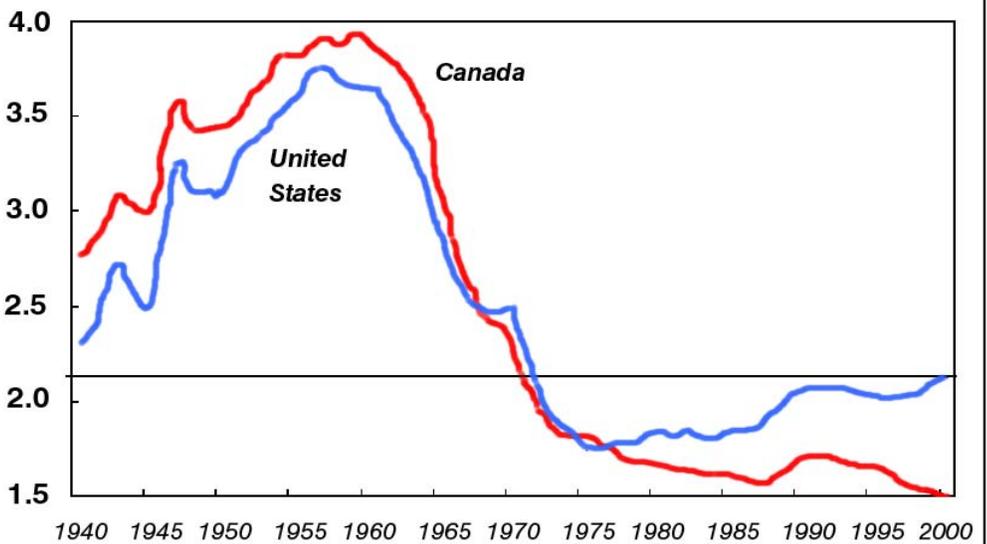
Despite its recent increase, Canada's population growth rate remains much lower than it was 50 years ago. Between 1956 and 1961, the population expanded by 13.4%, roughly three times faster than in the last five years. At that time, in the middle of the baby boom, women were having an average of more than 3.5 children.

The post-baby boom decline in fertility and the increase in deaths due to population aging have both played a role in slowing the pace of population growth substantially. The brief reversal of this trend that occurred in the late 1980s was due to an increase in immigration which coincided with a slight rise in fertility.

Canada's 2006 Census held on May 16th counted 31,612,897 Canadians. Fifty years earlier, in the first national quinquennial census, Canada's population was 16 million, about half of what it is today. If current fertility, mortality and international migration trends continue, no population decline is expected in the next 50 years and Canada's population can be expected to number 43 million in 2056.

<http://www12.statcan.ca/english/census06/analysis/popdwell/>

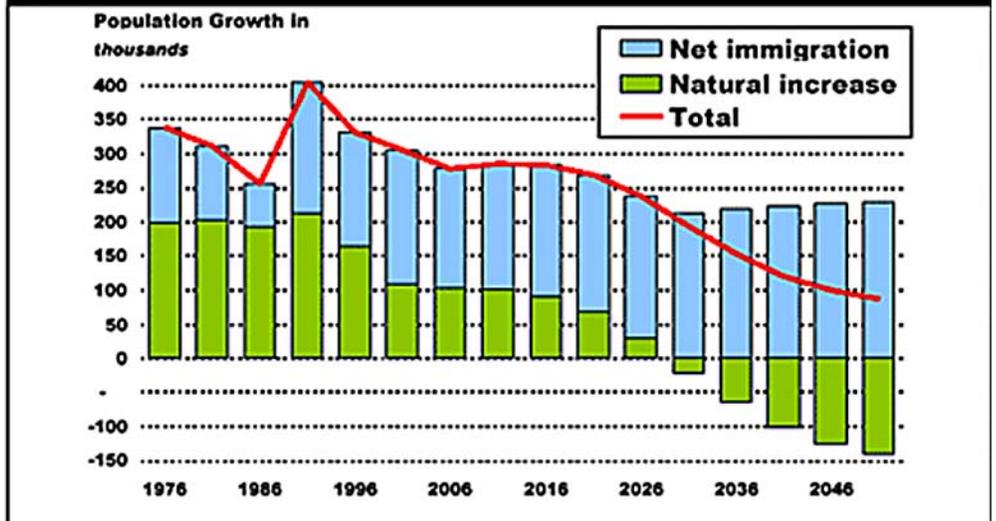
Number of children per woman



Note: The solid black horizontal line denotes the natural replacement population level of 2.1 children per woman

Source: Statistics Canada

FIGURE 2



NatlPortrait1.cfm

Start making babies

Excerpts from the *National Post*, editorial of Wednesday, March 14, 2007, commenting on the Census data released during the week of March 12-18.

On the surface, the 2006 Census results released on Tuesday paint a rosy picture....

But beneath that sunny macro statistic lies a disturbing fact: It is only thanks to immigration that we are able to generate respectable numbers. Indeed, the data show that the fertility rate for Canadian women is a mere 1.5, i.e., Canadian women are having, on average, just 1.5 children during their reproductive lifetimes ... that is 0.6 points lower than the 2.1 level that is necessary to sustain a stable native-born population.... Of course, Canada is a nation of immigrants. And the fact that immigrants and their offspring constitute an increasingly large share of



our population base is not objectionable in itself. But how long can this last? Eventually, there simply won't be enough high-quality immigrants to make the system work. ...

Complicating matters further is the fact that the countries where some of the most historically successful immigrants come from – China, the Indian subcontinent and the nations of southeast Asia – are experiencing economic booms. For some professionals, it is now easier to find work in Bangalore and Shanghai than in Toronto and Montreal. ...

Eventually, Canada will be faced with two options, neither good: limit our intake of immigrants, or lower our immigration criteria to sustain the current high numbers. ... Either way, there will be no one to pay the bills when the current crop of middle-aged Canadians retire...

There is a third option, however – and that is to encourage the people who are already in Canada to have more babies. ...

Questions

1. Is there anything unsettling about the census data?
2. Is Canada's population growth rate positive, negative or worrisome? Why?
3. Compare Canada's population growth with Mexico, Brazil, and South Africa over the last 60 years. Why such a disparity in the growth?
4. What complications may result from the increasing dependency of Canada on immigration?
5. From a pro-life perspective, what crucial fertility statistic is ignored and not part of the Statistics Canada census report?
6. What alternatives are there besides what the *National*

Post calls for?

7. Why don't the media report the obvious source of Canada's population problem?

Part III Judicial Controversy: Judges, Justice, and Reforms

The judicial branch in any government system has an important role to play. Each person is in theory to be protected equally by the application of just laws. Governments pass legislation to regulate human affairs in the best interest of the populace and for the common good of society. When governments pass laws, some body other than the lawmakers themselves must be in a position to review and interpret those laws and to determine whether the laws conform to the principles of the Canadian Constitution. So in this important way Canadian courts are to serve as a check on the power of the legislative and the executive branches, to ensure that our Constitution is applied to Canadians in a fair manner.

At times there will arise challenges and problems with the passage of laws, the implementation of laws, the administration of laws, and the administration of the justice system that exists to enforce those laws. In this next set of articles one looks at the role of the courts, structure of the courts, the importance of judicial independence, the changing court system, reform of the courts, current political criticism and controversy surrounding the courts.

A View of the Role of Courts from a School Learning Site

Why does our system of parliamentary democracy need a branch of government to interpret the constitution? In 1867 it was not possible for the Fathers of Confederation to specify all the minute details of Canada in a relatively short constitution. Also, inventions like the aeroplane and automobile were not around during that time period. The way around this tricky question is that the Fathers



of Confederation provided the general principles in our constitution, and the courts interpret those principles. If you will, the constitution is the bones of our society, and provides the framework and shape of government. The courts provide the skin and give the final touches of what the constitution is really going to look like. The Fathers of Confederation outlined in section 91 and 92 the powers of the national and provincial governments, and the Supreme Court provides the specific details of section 91 and 92 when the two governments have arguments over which level has control over certain powers.

Constitutions specify what powers government have over their people. However, they also specify the rights citizens have over their government. The courts are there to ensure that government does not abuse the rights of citizens in our nation. This is one example of the checks and balances in our political system. A second job of the courts is to ensure that the government does not overstep their boundaries and infringe upon citizens' rights. The part of Canada's constitution that is most noted for playing this role is the *Charter of Rights and Freedoms*, and the Supreme Court determines what those rights are.

For example, the *Charter of Rights and Freedoms* grants everyone the right to freedom of expression. Freedom of expression could mean that you are able to say virtually anything, anywhere. However, the Supreme Court interprets what freedom of expression actually is. For instance, in one court case the Supreme Court ruled that a person did not have the right to stand up in the middle of a movie in a theatre and yell 'fire,' just for fun and to watch people panic when no danger was present. The court has also ruled in the past that in many cases people do not have the right to spread hate to other people in Canadian society.

When the Supreme Court of Canada makes a decision, in many cases it will establish precedent. A precedent is an interpretation of a law or the constitution that will set a path on how other courts in the country are expected to rule on a particular issue.

http://www.sasklearning.gov.sk.ca/branches/curr/sci_tech/social/sssti/2001/courts.html

Canadian Judicial Council

The Chief Justice is chairperson of the Canadian Judicial Council, which is composed of all Chief Justices and



Associate Chief Justices of superior courts in Canada. This body, established by the Judges Act, organizes continuing education for federally appointed judges, coordinates the discussion of issues of concern to the judiciary and conducts inquiries, either on public complaint or at the request of the federal Minister of Justice or a provincial Attorney General, into the conduct of any federally appointed judge.

http://www.scc-csc.gc.ca/aboutcourt/system/index_e.asp

Questions

1. Briefly describe the essential role of the courts within the framework of the Canadian system of government.
2. How does the court play a role in protecting citizens' rights against the government?
3. Does the judicial branch make the laws or interpret the law through "precedents"?
4. Compare and contrast the judiciary in Canada with the judiciary in another country such as China, United States, France, Brazil or another country of your choice.
5. How do the role of judges and the independence of judges vary between Canada and the country that you selected to study?
6. Should the Chief Justice or other high court personnel run schools on how to comport oneself as a judge once appointed to the judiciary?
7. Who trains judges in their profession?
8. Who oversees judges as to their competence and impartiality?
9. Why must there be respect for judges in their role as judges?

Learning About the Judicial System

There is a site that has an interactive approach, allowing students and teachers to explore and discuss the role of the judiciary in Canadian governance. Addresses and answers questions like "Why do we need judges? Why must judges be fair and impartial? How do judges make decisions?"

<http://www.tryjudging.ca/>

The Department of Justice of Canada has its own site to provide essential information. It too offers a general overview of Canada's government system and the role of the judiciary.

<http://www.justice.gc.ca/en/dept/pub/just/05.html>

An article/speech by a Chief Justice of the Canadian Federal Court of Appeal, outlines the history, structure, and organization of the Canadian court system.

http://www.fca-caf.gc.ca/bulletins/speeches/canadianlegalsystem_e.shtml

<http://www.cjc-ccm.gc.ca/article.asp?id=2268>

Judicial Independence

In order for a constitution to hold real meaning in the

lives of its citizens, an independent judiciary, capable of interpreting and enforcing the Constitution free of political interference from those in power, is crucial.

An independent and impartial judiciary is the constitutional right of all Canadians, and the primary beneficiary of judicial independence is not the judiciary itself, but rather society as a whole.

The reality is that the rule of law cannot endure over time, if it can exist at all, unless the judges who are responsible for interpreting and applying the law and the Constitution are guaranteed their independence.

The three core characteristics of judicial independence are (1) security of tenure, (2) financial security and (3) administrative independence.

Impact of the Canadian Charter of Rights and Freedoms

I would like to address the impact of the *Canadian Charter of Rights and Freedoms* on the judicial role. The *Canadian Charter of Rights and Freedoms* is one part of the Canadian Constitution. ... It is useful to remember that the judiciary did not enact the *Charter*. It was enacted by a democratically elected Parliament and enshrined in Canada's constitution.

Clearly, however, the arrival of the *Charter* created a new role for Canadian judges. With a few exceptions, the *Charter* requires that all exercises of state power must comply with the *Charter's* guarantees of civil rights and freedoms.

It is the *Charter* that endowed the judiciary with the duty and power to protect the constitutional rights and freedoms of Canadians against the state.

Section 52 of the Constitution Act, 1982 provides that the Constitution of Canada, which includes the *Charter*, is the supreme law of Canada. Any law which is inconsistent with the Constitution is of no force or effect. As a result, the courts have the power to strike down laws that violate the *Charter*.

Where a *Charter* breach is alleged, it is for the government to establish, to the satisfaction of the courts, three things under Section 1 of the *Charter*: (1) that the legislation it enacted is a reasonable limit to the protected rights and freedoms (2) that the limit is prescribed by law and (3)

that such limit can be demonstratively justified in a free and democratic society.

Subsection 24(1) of the *Charter*, guarantees that „anyone whose rights and freedoms, as guaranteed by the *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances and Subsection 24(2) directs the courts to exclude evidence that was improperly obtained if its admission in a proceeding would bring the administration of justice into disrepute.

This allows the courts to grant whatever remedy is appropriate under the circumstances.

There is, however, a notwithstanding mechanism in section 33 of the *Charter* the allows Parliament or a legislature to enact legislation that overrides the rights set out in section 2 or sections 7 to 15 of the *Charter* for a five year period. Parliament has not invoked the provision to date.

Since the advent of the *Charter*, Parliament must always attempt to draft laws in light of the provisions of the *Charter*.

Judicial Accountability

Judicial independence also carries with it a feature of accountability.

The Canadian Judicial Council, the body responsible for promoting efficiency and responsibility of federally appointed judges and composed of all federally appointed Chief Justices, has adopted and published ethical standards to which judges aspire.

When a complaint is made concerning the conduct rather than the decision of a judge, it is investigated by the Judicial Conduct Committee of the Council.

The Council sets few rules about the process of making a complaint. It will commence an investigation if a complaint is made in writing, if it names a specific judge and if it relates to the judge's conduct. It is not necessary for complainants to be represented by a lawyer.

Judicial Activism

Judges are human beings and have, inevitably, been influenced through their own life experiences. However, all judges must strive to work with utmost impartiality and must only decide cases on their facts after having examined the submissions of all the parties.

As stated by Chief Justice Beverley McLachlin of the Supreme Court of Canada, in a recent address “Judges must not set agendas for social change or impose their personal views on society. The role of judges is to support the rule of law, not the rule of judicial whim.”

According to Chief Justice McLachlin, the idea that judges have a political agenda may come from the fact that judges must make decisions that have political implications.

Since legal, political and social issues are intertwined, the role of judges necessarily takes them into subject matter claimed by politicians. But it does not follow that the judges are acting as politicians; the judicial role remains separate from the political.





The politician's role is to raise questions and to provoke public discussion, questioning and debate, while the judge's role is to apply the law to the particular facts of a case, while considering all sides of the issue and the submissions by the parties.

When faced with a legal issue, the court must intervene and rule on the issue in accordance with the law.

Questions

1. What constitutes judicial independence?
2. How can one reconcile the independent judgment of the judges or court with the political will of the majority as expressed in Parliament?
3. How did the passage of the Charter of Rights and Freedoms affect the role of the courts?
4. What is the "notwithstanding clause" of the Canadian Constitution? What was it designed to do? Why has it never been used by the federal government?
5. Are the courts accountable to anyone or any body?
6. Have the courts been over-active despite the cautious statements of the Chief Justice?

Federal Tories charged with politicizing the court

***Globe and Mail* upset over Tory court choices, worry about hidden agenda**

Paul Tuns, *The Interim*, March, 2007

For several weeks in February, the *Globe and Mail* appointed itself the official opposition to the federal government, running numerous articles, columns and editorials criticizing the process by which the Conservative government of Stephen Harper is choosing judges.

Last year, the government amended the federal Judicial Advisory Committees that examine government nominees to various courts. The make-up of the 12 regional JACs were

expanded so that police representatives would have a voice



on the committees. Previously, the federal government appointed three members from the community at large while the other four members were selected by the provincial governments, provincial law societies, the Canadian Bar Association and provincial chief judges. The Tories have added one member – from the police – bringing the number of JAC members appointed by the feds to four of eight. All JAC appointments are non-paying, two-year commitments. ...

Liberal Leader Stephane Dion charged Prime Minister Stephen Harper with "stacking the committees" in order to "select judges who will cater to his neo-conservative agenda," and saying that in doing so, the prime minister was "politicizing" the courts. ... Liberal MP Anita Neville said the Tories were attempting to do "through the back door what he can't do through the front door" – never mind that the process has been made more transparent and representative through the government's changes.

The *Globe and Mail*, however, joined the official opposition when it went beyond reporting on these changes to outright slamming the government for threatening the independence of the courts. The paper 'reported' in a front-page story by Campbell Clark on February 12, "The Conservative government has loaded the committees that determine who can become a judge, selecting a series of Tories including former politicians, aides to ministers, riding association officials and defeated candidates." On the same day, *Globe* columnist John Ibbitson chimed in: "There isn't any other way to put it: The Harper government, by perverting the rules and by appointing party loyalists to key

positions, intends to stack Canada's courts with conservatives."

The next day, the *Globe* regurgitated much of its own reporting. Clark once again hammered the Tories: "Stephen Harper's Conservatives are stacking the committees that select judges with partisans to create an ideologically driven judiciary that will steer Canada's courts to the right, opposition parties charged yesterday."

...As Toronto lawyer Bob Tarantino noted on his blog: "You want a weak point in the system, it's the unfettered right of the minister to appoint which is the problem – not the fact that some slots on the JAC committee are being accorded to partisan appointments." But no one is disputing the prerogative of the justice minister to appoint judges.

In one way, the criticisms levelled at the federal government are not new. The changes to the JACs came under fire when then Justice Minister Vic Toews proposed them November 10. The Canadian Bar Association and the Canadian Judicial Council, headed by Supreme Court Chief Justice Beverley McLachlin, both expressed outrage over the move. As one prominent lawyer told *The Interim*, police have no right to be on the committees because as stakeholders in the legal system they have a vested interest in who becomes judges. But aren't lawyers and judges also stakeholders the lawyer was asked. "Yes, but they step back from the process and look at it impartially," she explained.

And it was a little rich for the Chief Justice of the Supreme Court to publicly comment the government's plan to slightly alter the Judicial Advisory Committees complaining that by doing so the prime minister was politicizing the bench. Apparently, Chief Justice McLachlin was unable to grasp that by interjecting herself into the government's process for choosing judges that she was herself politicizing the courts. ... Lawyer Bob Tarantino said it is incumbent upon critics to name even one unqualified appointment to either the JACs or to any court; he also said that critics should come up with a reason why political involvement should be a barrier to being named to the JACs, other than mere disagreement with the appointees' politics. However, even if the Tories were 'stacking' the JACs and this was a problem, as *Edmonton Journal* columnist Lorne Gunter has noted, with only 16 identifiable partisans out of 84 total JAC members, this is "hardly a partisan coup" by the Harper Conservatives.

Not that partisan appointments are anything new. A study of Liberal judicial appointments from 2000-2005 found that fully 60 per cent had previous ties to the party. That's not appointments to the committees that vetted judicial appointments, that's actual judges appointed by the Jean Chretien and Paul Martin governments. As the *National Post* editorialized in response to the *Globe's* excessive coverage of the Tory's partisan court appointments: "The notion that judi-

cial appointments in this country were beyond the realm of partisan politics before the Conservatives came to power is laughable. As long as politicians have been appointing judges, the process has been partisan."

The *Post* reminded readers ... [that] It is estimated that in excess of two-thirds of Quebec judges appointed during the Chretien and Martin regimes have or had Liberal Party connections.

... As Gunter wrote, the real problem for the Left is that its "clubby little monopoly over the judicial system" is being threatened.



But is even that true? With a few exceptions – Marshall Rothstein on the Supreme Court, David Brown on the Ontario Superior Court, Dallas Miller to the Court of Queen's Bench of Alberta – many of the judges the Harper government has appointed are not noticeably different in judicial temperament than those already on the bench. The problem is that the law schools and the legal profession has generally produced legal minds occupying a very narrow range of the ideological spectrum – overwhelmingly on the left on social issues like abortion and gay rights.

In reforming the JAC process, the Conservatives have provided a (very) mild corrective. ... If their [critics of the Harper changes] real concern is the politicization of the courts, it would have been better for the Liberal Party under Chretien and Martin to not hide behind it to introduce radical social policy, especially in the matter of gay rights. And the media might have criticized the usurpation of legislative prerogatives when judges began implementing laws rather than merely interpret them, such as when the Supreme Court threw out Canada's abortion law in the 1988 Morgentaler decision. And it would criticize politicians who hide behind court decisions rather than provide leadership on issues that have great consequences for society such as when judges create special rights for homosexuals or deny any rights for the unborn.

But the issue for many Liberals and their allies at the *Globe and Mail* is not the politicized judiciary but rather scoring political points against the Tories. That's plainly dishonest and does nothing to address the problem of politicizing the law, the heart of which is judicial activism not supposed partisanship.

Questions

1. What is the purpose or prime end of true government?
2. What should be the role of the judicial branch?
3. In Canada, what does the constitution say about the appointment of judges?
4. Who appoints judges?
5. What factors are considered in the appointment process?

6. What qualifications should candidates for judgeships have?
7. Can judges be removed from their positions?
8. What changes did the Harper government make that upset the *Globe and Mail* ?
9. What did Liberal Party critics accuse the government regarding this issue?
10. Were the *Globe and Mail* and Liberal criticisms valid?
11. How does Tuns take issue with these critics? What are his main points?
12. Has partisanship characterized the appointment process in the past?
13. “The problem is that the law schools and the legal profession has generally produced legal minds occupying a very narrow range of the ideological spectrum – overwhelmingly on the left on social issues like abortion and gay rights.” What point is Tuns making in this statement?
14. What may have been the motivation behind the *Globe and Mail* criticism of the Harper government on the issue? Does that undermine its criticism necessarily?
15. Would the election of judges (like in the United States) result in a better system, free of partisanship? If not, what other reforms can be undertaken to ensure an impartial judiciary?

members of the legal profession. If Chief Justice McMurtry was asked to have his photograph taken with (litigants) Bourassa and Varnell, it might indeed have been viewed as mean-spirited or worse to have declined.”

[see the earlier article on the composition of the Canadian Judicial Council]. ... REAL Women national vice-president Gwen Landolt said the situation points out a massive problem in the integrity of Canada’s judicial system.

“It certainly pointed out that you can’t have judges self-regulating themselves, because all they’re trying to do is protect each other from the public, rather than protecting the public from the judges ... It’s a closed shop to which the public really does not have access,” she told *The Interim*.

Landolt placed the root of the problem at the foot of the Charter of Rights and Freedoms, which allows the prime minister to appoint judges and not make them accountable for what they do afterwards. Far too many judges have gone on to make and interpret laws to suit their personal philosophies or ideologies, thus ignoring common law, precedent, written legislation and the Constitution.

“Certainly, the Ontario Court of Appeal, of which Mr. Justice McMurtry is the chief justice, is one of the great offenders,” said Landolt. “They’re the ones who said the medical use of marijuana should be legal. They didn’t have one scintilla of evidence to back that conclusion, but because they’re liberal and left-leaning, they thought marijuana should be readily available and the way to do it is to start off with medical access.”

... Landolt pointed out that even McMurtry’s appointment as Ontario’s chief justice gives pause for consideration. ... He got to be appointed to the bench because he and (former prime minister Jean) Chretien were buddy-buddy ... (The pair) were good friends because the (former Ontario government of premier Bill) Davis backed the Charter of Rights and was a kingmaker as the Charter was being drafted in 1981. When Mr. McMurtry retired from politics, lo and behold, he was appointed to the Superior Court of Ontario and then to the Court of Appeal. It was the political companionship and relationship with Mr. Chretien that put him there, because he certainly is not known among lawyers as having any particular legal acumen. He certainly is a politician and is using his position on the court, with the greatest

<http://www.cjc-ccm.gc.ca/article.asp?id=2268>

Should Judges Be Beyond Reproach: The example of Ontario Chief Justice Roy McMurtry

Complaints against McMurtry rejected

Tony Gosgnach, *The Interim*, March 2007

Perhaps not surprisingly, the entity that oversees the conduct of judges in Canada – which, remarkably, is itself made up exclusively of judges – has ruled that Ontario’s chief justice did not act improperly in two matters: when he legalized so-called same-sex marriage in his province in 2003, despite the fact his daughter was involved in a same-sex relationship at the time, and when he partied with the very litigants involved in the case a scarce two weeks later.

REAL Women of Canada had filed a complaint with the Judicial Council of Canada over these two issues in July 2006 and a decision was handed down this past December. According to Mr. Justice Richard Scott of the council, “the sexual orientation of a judge’s children, and indeed the fact that a judge’s children are married or living in a common-law relationship, are not ... indicative of any bias on the part of the judge.”

Scott added that with respect to McMurtry’s partying with litigants, “It is well established that chief justices have public and representative functions, as well as judicial responsibilities. Attendance at such events is important to ensure ongoing exchanges between the judiciary and other



respect, for a political agenda ... not a legal one.”

The mainstream media refused to report on the complaint against McMurtry, the reason for which Landolt ascribed to their sharing of left-liberal views.

She would like to see changes to the judicial system in Canada, beginning with the ending of appointments of unaccountable judges. “I would like to see public and parliamentary input into their appointments. The second thing is, I would certainly amend the Supreme Court of Canada Act ... to restrict their almighty power.... Put some restrictions on these judges.” Historically in Canada, judges have “just been lawyers with political connections,” she said. “It doesn’t mean they acquire wisdom or knowledge or common sense when they’re appointed.”

Landolt added the insular legal and judicial community is exhibiting its true colours again with the recent controversy over changing the composition of judicial advisory committees, which review the proposed appointments of judges. “They’re a very cosy, very happy little club. They appoint each other ... By putting in an intractable police officer who wouldn’t be in on the game – oh my goodness, were they upset! They want this to be closed off to the public and they want to control the appointments, because they’re appoint-

ing each other left, right and sideways ... I think what the Conservatives are trying to do is break through lawyers with political connections ... by putting the police on ... People have to know the frailty of the human race is certainly sitting on the bench, as well as appearing before the bench!”

She surmised that no other decision of the Judicial Council’s has so undermined the proper administration of justice, as well as the credibility of the council and the judiciary, as its ruling in the McMurtry matter. She is encouraging Canadians to write to the council and communicate their thoughts on the questionable handling of the McMurtry matter.”

Questions

1. What issues were involved in the McMurtry case that went before the Judicial Council?
2. What criticisms does Landolt make about the shortcomings of the judicial system in Canada?
3. What reforms does she propose? Do you agree or disagree? Why?

Yahoo Forum for Teachers

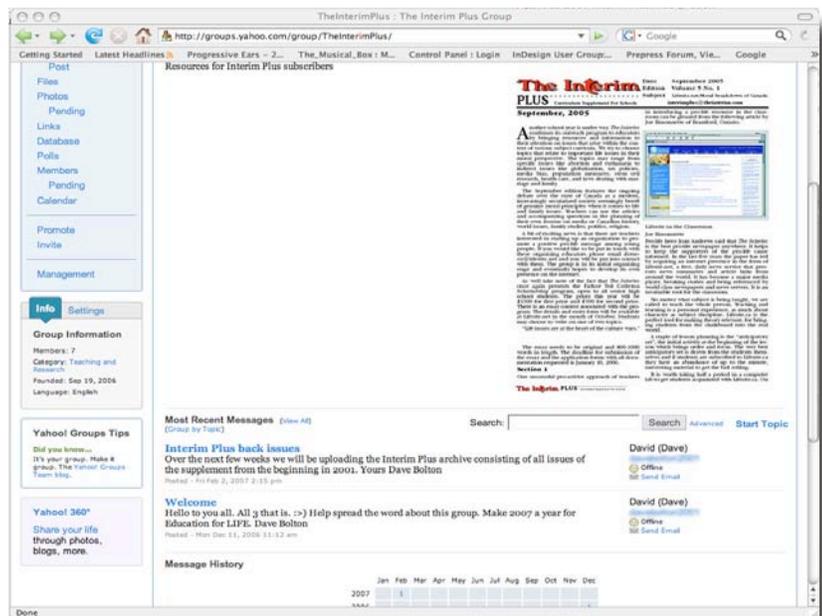
Lastly, we bring to teachers’ attention the formation of a yahoo group to serve as a forum for pro-life educators to exchange ideas, views, and communicate their thoughts and teaching strategies on key life issues of the day. You are encouraged to join the group and make your own contributions. This is one simple way to expand the culture of life.

The address is:

<http://groups.yahoo.com/group/TheInterimPlus/>

Please tell friends and colleagues about this new link for communicating with like minded educators. There is so much to be done and so few to do it, especially when the few do not realize how numerous they actually are because they are not in contact with one another. Nominate friends and fellow teachers. Send this call out to them.

Also, if you have a resource to share we will gladly post it for others to access.



How to join The Interim Plus via the group page:

1. Locate the group (<http://groups.yahoo.com/group/TheInterimPlus/>).
2. Click on the Join This Group button on front (home) page, as seen above.
3. If you are not signed in, you will be asked to enter your Yahoo! ID. If you do not have a Yahoo! ID, you can register by clicking on the Sign Up link.
4. Set your membership preferences. When you join, you can choose a profile you would like to display to the group, select the email address at which you would like to receive group messages, choose how you receive group messages, and more.