

En Garde!



by John Roggeveen

Pierre Elliot Trudeau, Chief Justice Bora Laskin, *The Edmonton Journal*, and Ron Collister are all out of touch with reality when it comes to the "Berger Affair."

What is the Berger Affair you ask? For those of you who only read the sports section, the Berger Affair centers around B.C. Justice Tom Berger and an article he wrote for the *Toronto Globe and Mail* about native rights and the Constitution.

Berger, to be succinct, seems to feel the Constitution does not adequately protect the rights of Canada's native people. In time we will know if Berger is right.

Berger's opinion, however, is not what got him into hot water. Berger's mistake, apparently, was that he dared to make a public statement about a controversial political issue.

Not one of those who berated Berger presented a cogent argument to back himself up. It seems obvious that they didn't put much thought into their criticisms which, except for Laskin's, were rather vague. Whenever I see such vague criticisms, I can't help but wonder if the

critics really know what they are talking about, or if they are being purposely vague so they can pull the wool over someone's eyes.

Laskin said that "In my understanding, . . . judges are expected to abstain from participation in political controversy.

He also said, "Unbelievably, some members of the press and some in public office in this country seem to think that freedom of speech for the judges gave them the full scope of participation and comment on current political controversies, on current social and political issues."

"Was there ever such ignorance of history and principle?" Laskin asked the Canadian Bar Association audience.

I'm amazed at what Laskin has said. I may be a blind man but I can see no legitimate reason for judges refraining from commenting on political issues. Certainly, tradition is no excuse, as Laskin seems to think. The reasons behind tradition may merit consideration but mere force of habit should carry no weight.

I agree that it is wise to prevent judges from holding political office and to keep politicians off the bench to avoid conflict of interest.

But, holding political office is not the same as expressing political opinions. Just as ordinary citizens can speak their minds about political issues, judges also should not be muzzled.

Judges are, hopefully, among the wisest members of our society. Forcing them to be silent when important political issues are being discussed is a grave mistake. Such a practice would most surely be detrimental to our society's development. The only purpose served by silencing judges is in muffling political dissent. It would be a good way of subverting your opposition if you could simply appoint them all to the judiciary.

Maybe that is what Trudeau tried to do. Trudeau said that someone should "do something" about Berger. Trudeau seems to have more influence on the judiciary than he thinks it should have on him. It wasn't very long after Trudeau made his remark that another B.C. judge lodged a complaint about Berger, even though Berger had spoken out before without any big stink.

Ron Collister's support of Berger was rather weak. Collister said that, "Journalists are supposed to report and not show

their own feelings. Doctors, lawyers, accountants are not free to discuss their cases. And judges, above all others, should stay silent except to interpret the law in cases that are brought before them. They don't make laws: they interpret them." (his italics)

What a bunch of baffleb! Collister should get a job with the Ministry of Propaganda. There are good reasons why doctors, lawyers, and accountants keep silent. There are also good reasons why journalists don't give their opinions when they are reporting news. But, there is no good reason why judges should keep quiet "except to interpret the law" as Collister suggests.

No one, I'm sure, is going to suggest that by keeping quiet about an issue judges will be more impartial than if they speak out. Unless, of course, that person lives in Never-never land.

A question that keeps tickling my brain is this: Does Chief Justice Laskin feel he deserves special privileges or is the Berger Affair not a controversial political issue, eh?

I applaud Berger's guts. I hope there are more judges like him.

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