

Courts must enforce laws, not interpret them

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As most are aware, a Saskatchewan court recently ruled that the federal marriage law is unconstitutional. As a result of the many messages presented in the national and provincial media regarding this decision, I felt it necessary to present my own comments on it.

In her ruling, Judge Wilson applied Section 15 of the Charter (which outlaws discrimination on the basis of sex). Yet, when our Constitution Act of 1867 was patriated in the early 1980s, those who negotiated the inclusion of a Charter of Rights and Freedoms (the Premiers and the federal Minister of Justice) were in agreement that Section 15 was solely intended to deal with gender discrimination. When Federal Justice Minister (Rt. Hon. Jean Chrétien, PC, MP) appeared before the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada in 1981, he stated that Section 15 would not apply to sexual orientation. In the words of Mr Chrétien: "It is because of the problem of the definition of those words (sexual orientation) that we do not think they should be in the constitution."

Our constitution sets out a formula for its amendment. At least seven provinces representing over 50 per cent of the population within the Canadian federation must approve a constitutional amendment for it to be entrenched. Yet, in the 1990s, the Supreme Court of Canada (Vriend vs. Alberta 1998) amended Section 15 of the Charter by adding the words "sexual orientation". The Supreme Court was never given the power to amend our constitution. This is a clear cut case of the court replacing the true intent of the law with "its own" definition. Judges should not assume the role of politicians.

Neither our constitution nor the rule of law gives them the power to pass or to amend legislation. Such action is similar to an umpire changing the rules of a baseball game during the seventh inning stretch in order to suit his own personal agenda. Judges also need to stop changing the rules of the game, for the rules they are unilaterally changing are the rules of law and the separation of power.

Just as disturbing is the recent action by the Liberal Government. The federal Liberals, instead of protecting its constitutionally entrenched powers, have presented a new marriage law in draft form to the Supreme Court of Canada for its approval. In other words, Parliament should only pass laws once they have been pre-approved by the courts. This shows extraordinary disrespect for the democratic process. When judges decide to replace the intent of our constitution with their personal views, they place themselves within the political arena. In doing so, they are unilaterally and inappropriately taking over the functions of elected representatives.

Sincerely,  
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