

Treatment of Cultural Minorities and Administration of Justice Issues by the Media

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Justice Hughes once said: "The Constitution is what the judges say it is".
That is strikingly similar to what a news editor once said: "News is what I say it is".

There are other common strands between your profession and mine. Both remain, largely, unaccountable -- yours more than mine. I have to work at keeping my share of the market, you have to try very hard to lose yours.

People in both professions tend to have thin skins, even though both sit in judgment of others every day -- at least half a day, in the case of some judges.

Both professions also have a tendency to reflect -- and hence help maintain -- the status quo. Neither is likely to know a societal trend until smacked in the face with it. In our case, it usually takes demonstrations in the streets to perk us up. This has given rise to a new class of professional protestors who can fulminate the moment the news cameras roll.

People in your profession and mine tend to resist management. Writers and editors pose as creative people who should be left alone to compose their prose, rather than delve into the details of running their departments -- prioritizing, administering, living within budgets. From what I hear, it's not much different with judges.

Both professions remain unrepresentative -- with not enough women, natives and visible minorities. We both have our well-honed justifications for stalling Employment Equity.

We both tend to ignore a basic axiom of democracy: Institutions that take too long to catch up with the demographics of their clientele risk losing their greatest asset -- their legitimacy in the eyes of the people who pay for them.

Legitimacy and credibility which the media lack, you do enjoy in abundance, for now -- a tribute to your overall record of fairness and integrity. The Supreme Court is, rightly, the most respected institution in the land, for now.

This public reservoir of goodwill often extends to the media. Despite our adversarial relationship, most editorial writers, for example, tread carefully in criticizing judgments, especially from the higher courts. What also works in your favor is media laziness.

Journalism has become a highly choreographed daily dance, between the media and obliging partners from government and public institutions.

The chattering classes provide the story lines. We turn on our tape recorders.

You write judgments. We excerpt them.

This orchestrated flow of easy copy tends to preclude investigative journalism -- about, say, the inconsistent application of law; or higher sentences for petty thieves than white collar criminals; or judicial biases against the aboriginal peoples, indeed all the poor and the unwashed.

Yet, I hear some members of the judiciary make the case that since so many of our institutions are in such public disrepute, critics should leave the judiciary well enough alone.

They remind me of the high priests of the Vatican, and orthodox Muslim clerics cloistered in remote seminaries of Iran and Saudi Arabia, and fundamentalist rabbis, and blue blood Brahmins - all of whom also demand unquestioning fidelity to their interpretations of the law.

They, too, confuse public discussion with rebellion.

Openness of the Canadian judicial process is the natural outgrowth of the Charter. Since you are now the ultimate arbitrators of constitutionally-entrenched human rights -- abortion, Sunday shopping, funding for separate schools, the Lord's Prayer, mandatory retirement, wife-battering, unreasonable delays in justice, the rights of linguistic minorities and refugee claimants -- it is natural that your work enjoys the ultimate approbation of the modern age: gracing the nightly National or the front pages of the next morning's newspapers.

Such exposure inevitably invites comment.

This public scrutiny from informed citizens helped nudge you to confront gender bias in the law. It helped free Donald Marshall. It got David Milgaard a judicial review. It got us the pioneering Manitoba native justice inquiry, and it will increasingly force you to examine sensitivity, or lack thereof, towards other minorities, besides the aboriginal peoples.

It might be useful for judges in Toronto and Vancouver, for instance, to occasionally leave their limousines and ride the subway and the Skytrain to see the changing faces of those paying for your perks.

The Great White North is not so white anymore.

One-tenth of Canadians today are visible minorities - about 2.6 million - more than the population of any prairie province, or the combined population of Atlantic Canada.

Ontario alone has about 1.27 million visible minorities, and Toronto, 25 per cent -- one in four. The most dramatic illustration of our future demography is displayed in some classrooms in downtown Toronto where you see four or five white kids in an enrolment of 25 to 30 - or in the maternity wards of our hospitals.

Today, Canada has about 600,000 Chinese-Canadians; 500,000 blacks; 500,000 south Asians.

By the year 2000, Toronto and Vancouver each will have 45 per cent visible minorities. Even Edmonton, Calgary, Winnipeg and Montreal will have between 20 and 25 per cent.

In dealing with so many minorities, the justice system cannot operate in mono-culturalism, any more than the media or the rest of society can.

There is no official culture in Canada, Pierre Trudeau said in 1971. Every culture is legitimate, every value is valid - so long as it does not clash with the law.

Yet, Canadians seem to have awakened to this multicultural reality only now, and are debating whether or not we need a set of common values to survive.

This is a phony debate.

We do have common values, best codified by the Charter of Rights, or the Magna Carta.

More important, our values and morality - and the ensuing public policy - keep changing, evolving, improving.

If our values remained static, we would be an intellectually, culturally and socially dead society.

Since all law is laden with values, it too must change, as should your interpretation of the law.

The true test of a democratic and civilized society - and its administration of justice - is how well and how quickly it accommodates such change so as to protect the rights of all citizens and, ultimately, reflect their social values in law.

If we leave people - and their values - on the margins, a democratic society risks their wrath and, finally, their rage.

If any nation is capable of such inclusive justice, it is Canada. The question is: Are you up to this challenge?

Most of you grew up with a Eurocentric view, coloured by colonial or Cold War nations of the world - Them vs. Us - featuring grotesque and often racist caricatures of Africans, Asians, Jews, Arabs, Muslims and others.

But the They are here, as full-fledged Canadian citizens. They have become Us. Yet, they remain foreigners for too long in many Canadians minds.

The sooner we make the mental leap of not treating them as extensions of foreign entities, the sooner we will come to terms with this new Canada.

A certain nostalgia keeps getting in the way, though.

Some people harp back to the past, when Chinese Canadians, Japanese Canadians, Italian Canadians, Ukrainian Canadians, Polish Canadians, Jewish Canadians and others lived happily with societal consensus.

But it was the consensus of the Anglo-Saxon elite which denied many people even the right to vote or buy property.

What is also conveniently forgotten is that many minorities acquiesced because they did not have a choice, and that while they feigned acceptance in public, they waged quiet battles inside their homes, or their synagogues, for cultural and religious retention.

That battle is now out of the closet, forced into the open by today's better educated, more financially secure and assertive minorities.

They are challenging many of our long-held assumptions, questioning school curriculae, confronting systemic biases and prejudices, especially by some of our police forces, and they are looking to the Charter, and you, to ensure that their rights are not violated - and are indeed advanced.

It may be time for the Judicial Council to examine whether our judicial system is ready for the challenges of providing fair justice in today's multi-cultural, multi-religious, multi-ethnic and multi-racial society - a virtual United Nations blooming under Canada's glorious sunshine.