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Democracy, a delicate balance

The return of Parliament is more than an event in the news cycle. It's a time to look ahead, and to thoughtfully consider the important role each branch of government will play in that future, and in the life of each individual Canadian.

Richard Wagner

From my desk in my office at the **Supreme Court of Canada**, I can look out the window and see Parliament. In the morning, it is bright in the rising sun. In the evening (or, let's face it, late afternoon at this time of year), it takes on a warm sunset glow.

That view is as close as I get to Parliament, for the most part. It's a reminder of how close we in the judiciary are to the executive and legislative branches of state, but how separate. And this is as it should be.

When I do visit Parliament, it is to preside over its opening or, with my colleagues, to hear the Speech From the Throne. These are ceremonial occasions, but they are important in the life of our democracy. They mark new beginnings. They bring the three branches of state together for a moment, to remind us of the common purpose we pursue, even in our very different roles.

Success of our democracy is found in our successful balance

For we are three different-but equal-branches, each with tasks and power set out for us in the Constitution. The executive decides policy. The legislative branch makes and passes laws. We in the judiciary interpret those laws-but we can't tell the executive what policy to make, or the legislature which laws to pass. All we can do is strike down what is not consistent with the law, and give advice on what might be done to fix it. By the same token, neither the executive nor the legislature can tell the judiciary what cases to hear or how to decide them. This is what judicial independence means.

Our three branches give us important checks and balances. Members of the executive and legislative branches-that is, politicians- are elected, and have to go back to citizens for approval on a regular basis. Judges are appointed, and need no such public approval. This isn't some kind of personal privilege. It's because judges have a different role. The equilibrium of all three branches is what gives us our vibrant democracy, strong rule of law, and robust protections for people's rights and freedoms.

Judicial independence is critical to the balance

Judicial independence is one of those phrases you hear from time to time. It's bland enough that it can be easy to gloss over without a thought. Yet, it is crucial to this equilibrium. Without it, these important values I mention would be unbalanced. While the scales of justice may tip to one side or another, the scales of democracy must not.

This is why a document like the "Accord to strengthen the independence of the **Supreme Court of Canada**," signed last year, is so important. It asserts the Supreme Court's independence from the policy- and law-making functions of the other branches.

Politicians are the finger on the pulse of the people. They ensure the state responds to what the people need and want, based on the tenor of the times. But the times can go awry, as history has shown us. The judiciary is meant to be a check on that. Judges don't decide based on what's popular. We decide based on what's right, in the context of our legal traditions and rule of law. It is a different way to make decisions, and in the context of the balance struck within our democracy, no better or worse. At the Supreme Court, of course, we take the broadest view possible, in deciding what is right while considering the context of all Canadians. Our independence is crucial for this.

We cannot take this balance for granted

These are all very basic constitutional concepts. But in an age of misinformation and disinformation, and of 280-character instant updates, they can get conflated and confused. Judges are not politicians. Politicians are not judges. We are different. We are equal. We are meant to keep each other in balance. And, throughout our nation's history, we have done so.

In keeping this balance, all of us as Canadians have built a democratic system that truly works. It works so well that we often

don't even notice it. It's like oxygen in the air; necessary for life, but not something we necessarily think about until it isn't there anymore. By which point, of course, it's too late.

We can't take what we've built for granted. Our nation and our institutions are strong because Canadians continue to have confidence in them. I'm not saying all of what we've worked for will disappear. But it can. Other countries know this very well. Their citizens once thought, "it can't happen here." It can't, until it does. We live in troubled times. The rule of law and judicial independence are under threat around the world. We can't be complacent. We must avoid actions that will disrupt the delicate balance Canadians throughout history have worked so hard to get right.

All this to say, the return of Parliament is more than an event in the news cycle. It's a time to look ahead, and to thoughtfully consider the important role each branch of government will play in that future, and in the life of each individual Canadian.

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