Albertans. A poll of 1,007 people found that 48% believe gays should be treated the same as heterosexuals under Alberta laws governing marriage, adoptions and foster parenting. However, everyone concerned knows that random-sample telephone surveys are notoriously unable to measure moral opinions accurately.

In a curious bit of timing, just a week before the *M vs. H* decision came down, the Alberta government yanked a piece of legislation that would have governed the use of referenda in situations where the province was considering opting out of major constitutional rulings. The bill has apparently only been delayed until the fall, or perhaps next spring, but it is unclear why the Tories put it in limbo. Then again, as Mr. Havelock notes, the legislation as drafted does not force the government to abide by the wishes of the voters expressed through a referendum.

With or without the opt-out referendum legislation in place, it seems clear that Alberta will be the focal point of what may be Canada's final battle over the traditional legal definition of family. Voters in other provinces appear to have wearied of the debate and tuned out. Reform MP Kenney, who calls the *M vs. H* ruling "one of the most outrageous exercises of raw judicial power in the history of modern democracy," says citizens must awaken to the fact that not only are ageless societal values under attack, but responsible government itself is threatened by judicial usurpation of the role of elected legislators.

Medicine Hat lawyer and conservative activist Dallas Miller agrees that the fate of family law and responsible government in Canada is likely in the hands of Albertans. "We've got eight unelected judges making a revolutionary decision concerning family law," says Mr. Miller. "Although the Alberta government has committed to building fences, it hasn't shown any leadership in the past. Clearly, this is the time to bring out the fencing material."

Conservative ideologues like Messrs. Kenney and Miller might be dismissed as partisan fearmongers, but it is not so easy to ignore the dire warnings of the Supreme Court judge from Quebec who wrote the dissenting opinion in *M vs. H*. The case "raises elemental social and legal issues," wrote Mr. Justice Gonthier. "I believe that the stance adopted by the majority today will have far-reaching effects beyond the present appeal." ■

Our next constitutional monarch

In June, Justice Peter Cory is scheduled to retire from the Supreme Court, and Justice Louise Arbour appears to be the top candidate to fill his seat. So far, she is affecting a studied casualness about entering judicial Valhalla. She told the *Globe and Mail* that "I have not had an offer. If I have one, I will consider it." Madam Justice Arbour, 52, is currently investigating tales of atrocity in the Balkans as chief prosecutor of the UN's International War Crimes Tribunal. It is widely considered that her departure would set back UN efforts to prosecute "ethnic cleansers," but she is still expected to make the move.

The bilingual human-rights boffin served on the Supreme Court of Ontario from 1987 to 1990 before being appointed to the Court of Appeal for Ontario, which she left to go to the Hague. That departure was controversial; at the time, the federal Judges Act, a statute of constitutional force, held that judges were not to mix their duties with other jobs or enter anyone else's employ while on the bench. The act has since been amended to permit leaves of absence—a change that insiders called the "Arbour amendment."

Madam Justice Arbour is also known for her 1996 report on the Kingston Prison for Women riots, in which she condemned Corrections Canada for subjecting unruly inmates to male riot-squad strip searches and imprisonment in segregation cells. During four days of unrest in 1994, the inmates who evoked Madam Justice Arbour's sympathy set fires, stabbed a guard with a needle, broke beds to make clubs and threw urine on guards.

She stands to become the third woman on the nine-judge court. She would also be its fifth francophone; the media are stressing the desirability of another francophone justice even though Quebec, from which three of the nine judges must always hail under the constitution, is already over-represented.

PAUL WODEHOUSE

Justice Arbour: Hammer of the Slavs, defender of urine-throwers.

Each new Supreme Court nomination has been scrutinized more intensely than the last by the media, but the selection criteria used unilaterally by the Prime Minister's Office are largely unknown. Mostly the press talks about what it knows; the gender, genetics and geographical origins of the candidates. What cannot be known are the essential legal and political beliefs of the potential judges, but those beliefs become ever more important as the Supreme Court assumes more social-engineering power.

University of Calgary political scientist Ted Morton says that an American-style selection process with public hearings would reinject a little democracy into a political system increasingly dominated by judges. Observe *M vs. H*, he says: "The ruling had nothing to do with the charter. The ruling had everything to do with the nine human beings sitting on the court."

Prof. Morton says that if public hearings were established, witnesses would testify to the candidate's qualifications and their judicial and legal perspectives. The government could, at least in theory, be held accountable for the behaviour of their chosen judges. "And the public," Mr. Morton emphasizes, "would finally come to realize the degree to which charter decisions are directly related to the judges making them." ■

CARMEN WITTMEIER