Has There Been Meaningful Dialogue Between the Courts and Parliament over Medical Marijuana?

Last week, the federal government responded to the Federal Court of Appeal decision in *Canada (Attorney General) v Sfetkopoulos*.[1] In 2008, the court declared unconstitutional the federal regulation that restricted each grower of medical marijuana to servicing only one client. The government responded by bringing in a new regulation to increase the number to two. Users of medical marijuana complain that the changes are insignificant, and predict that nominal amendments will simply force another court to make a more detailed ruling.[2] The government's minimal response to a constitutional ruling casts new light on the theory of "*Charter* dialogue."

"*Charter dialogue*" describes how courts interact with elected representatives. Typically, when a law is struck down as unconstitutional, the enacting body will respond by amending the law to bring it within the bounds of the constitution. A law may also be enacted with language that justifies any infringement of *Charter* rights. However, as Supreme Court of Canada Chief Justice McLachlin wrote in *Sauvé v Canada*, "the healthy and important promotion of a dialogue between the legislature and the courts should not be debased to a rule of 'if at first you don't succeed, try, try again.'"[3]

Further Reading
Ken Dickerson, "Top Court Says: Hands Off My (Medical) Stash!" *Centre for Constitutional Studies* (23 April 2009).

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[1] 2008 FCA 328.
[2] "New medical marijuana rules too strict, users say", *National Post* (26 May 2009).
[3] [2002] 3 S.C.R. 519 at para.17.