



*A Tribute by the
International Commission
of Jurists (Canadian Section)*

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It is a great honour for the Canadian Section to publish this special tribute to the Honourable Claire L'Heureux-Dubé, who has contributed so much toward advancing the goals of the International Commission of Jurists. Both domestically and internationally, she has been tireless and unyielding in her promotion of the Rule of Law, the Independence of the Judiciary, and the Human Rights of individuals and groups.

Each of the authors whose articles comprise this tribute has special insights into the various aspects of her career and character. We are grateful for their contributions, in particular for meeting the challenge of suppressing their enthusiasm for this remarkable person to the extent necessary to conform to the space constraints of a publication of this nature. It was necessary in nearly every case to shorten the original versions, which caused us to consider at least momentarily whether or not a magazine-length tribute was required.

We are also grateful to Pat Whiting for undertaking the role of editor with her usual skill and commitment.

From all of us who have worked with you in the ICJ over the years, Claire, thanks for everything. We'll miss your enthusiasm, your humour, and your lively presence, but we feel certain that these qualities will be put to good use in whatever comes next.

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THE HONOURABLE MADAM JUSTICE CLAIRE L'HEUREUX-DUBÉ

The Honourable Catherine A. Fraser

Chief Justice of Alberta

Madam Justice Claire L'Heureux-Dubé the early professional years

Claire was born in 1927, 14 years before women could be called to the Bar and 13 years before women could even vote in Quebec. Educated in convents from 7 to 17, Claire demonstrated her remarkable scholastic talents early, routinely winning all the top honours in school and graduating in 1946 with an Arts degree when she was only 19.

Claire began her working career as a secretary for a cod liver oil company. Given her standards of excellence, Claire would correct the grammatical errors in the letters her boss dictated. One day, Claire admitted the obvious: "I should be sitting on the other side of that desk."

It was 1948, and Claire decided to enter the Faculty of Law at Laval. When told "we don't admit women," Claire persevered and was eventually admitted. However, despite her outstanding record and evident financial need, she was not eligible for any

scholarships; they were open only to men.

Because the classes were in early morning and late afternoon, Claire was able to work from 10:00 am to 4:00 pm, first for a trust company and then for Sam Bard, a lawyer, who became Claire's friend, mentor, and partner. When Claire was admitted to the Bar in 1952, Sam told her: "You're staying here" and Claire did, remaining with the firm until her appointment to the Bench in 1973.

Claire credits Sam Bard with providing strong support at a time when according to Claire, not only was there "no room at the top for women in law, there was no room at the bottom either." During her early practice years, referrals were often from other women; many clients were poor, and Claire frequently worked for nothing. Whenever Claire was upset, especially about a client's problems, Sam would say: "You must learn to roll with the punches,

Claire." In the years that followed, she rolled with many but always refused to roll with inequality.

In 1957, Claire married Dr. Arthur Dubé, a professor of the Department of Mines and Metallurgy at Laval University, and they had two children, Louise and Pierre. Distinguishing herself in her 21 years at the Bar, Claire was President of the Family Law Committee and Family Court Committee of the Quebec Civil Code Revision Office, Vice President of the Vanier Institute of the Family, a Counsellor of the Bar of Quebec, and a renowned family law expert and lecturer. Claire's judicial journey began with her appointment to the Quebec Superior Court in 1973. Six years later, Claire became the first woman appointed to the Quebec Court of Appeal, and in 1987, Claire was the first woman from Quebec to be appointed to the Supreme Court of Canada.

Claire grew up at a time in Canadian history when equality for many was an unachievable goal. She lived through that era; she experienced discrimination; she saw first-hand the toll that injustice took on her clients and others, and especially women and children; she called it for what it was; and she fought to end it. All this helps explain why the common thread running through Claire's life has been her passion for social justice and equality for all. "I saw so much injustice. I just had to do something." Madam Justice Claire L'Heureux-Dubé has succeeded magnificently.

The Honourable Michèle Rivet

President of the Quebec Human Rights Tribunal

Madam Justice Claire L'Heureux-Dubé a complete dedication to the Rule of Law

In July 1998, at the Triennial Meeting of the International Commission of Jurists in Cape Town, Madam Justice Claire L'Heureux-Dubé was selected to serve a three-year term as the International President of the ICJ, thus becoming the first woman and the first Canadian to hold this office. At the subsequent Triennial Meeting in Geneva in September 2001, her mandate was extended.

Claire's attainment of this position was a matter of

intense pride for Canadians, for lawyers, and for women. Moreover, it was a wonderfully appropriate recognition of her many years of tireless work with the ICJ and a crowning achievement in her long career as a champion of human rights.

Named President of the Canadian Section in 1981, Claire immediately set out to make it stronger and more viable at all levels. She brought the same strength and energy to her position as International

President, and at a particularly difficult period for the ICJ when others might have been inclined to step down, Claire carried out her duties with characteristic determination.

From the beginning of her mandate as International President, Claire insisted that the ICJ should move in certain directions. She identified the need to develop formulas to monitor the action of stakeholders newly arrived on the international scene (such as the World Trade Organization, the World Bank, and the International Monetary Fund) and to work with them to ensure that the central matter of human rights would not be lost in the drafting of international trade and investment agreements. She recognized the need to raise awareness in the corporate community and to strengthen existing human rights mechanisms and instruments to ensure accountability in the event of human rights violations in that sector.

Claire realized that cooperation between international organizations was key to an effective

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a complete dedication...*continued*

campaign against corruption and against impunity for its perpetrators. She recognized, too, the importance of the ICJ's close involvement in the international courts created for Rwanda and the former Yugoslavia and of the ICJ's unique capacity to contribute to the establishment of the International Criminal Court.

Claire is adamant that there can be no justice without an independent and impartial judiciary that consistently operates with respect to equality values and the observance of the rule of law, and under her direction, the ICJ and its affiliate, the Center for the Independence of Judges and Lawyers, tenaciously pursued their defense of the independence of the Bench and Bar.

Although there was a great deal to do as International President, Claire never abandoned her commitment to the Canadian Section, and throughout my own four years as Canadian president, I continually found reasons to be personally grateful for her involvement, perspective, and friendship. She never hesitated to suggest improvements to the various projects we undertook, and she frequently attended executive committee meetings. She generously took time to participate in the international projects, whether that meant meeting Croatian, Serb, and Montenegrin judges in Montreal or seeing them in Ottawa. Claire was also active in various meetings concerning our regional project to support the independence of the judiciary in the Southeastern Adriatic countries.

It was Claire's idea to bring to Canada the former Chief Justice of the Supreme Court of Zimbabwe, the Honourable Anthony Gubbay, as it had been her idea that the ICJ should host the Canadian visit of a former Supreme Court Justice from Pakistan, the Honourable Nasir Zahid. Thanks to Claire, these eminent jurists participated in joint ICJ-Canadian Judges' Forum panels at CBA Annual Meetings, thereby providing the Canadian legal community with a unique opportunity to hear first-hand of situations in which the rule of law and the independence of the judiciary are under siege.

I have no doubt that Claire will continue to work with and for the Canadian Section as well as the international body and that in the future we shall continue to be just as grateful for her intellectual and moral support in advancing the aims of the ICJ as we have been in the past.

the jurisprudence of Claire L'Heureux-Dubé

There are many legacies of Claire L'Heureux-Dubé, but of all the memorable achievements of this memorable judge, none is more profound than the jurisprudence she tenaciously developed during her 15 years on the Supreme Court of Canada. She took the torch lit by Brian Dickson and Bertha Wilson into her firm grasp and never let that light stop glowing for human rights.

This juristic phenomenon, forged by her childhood home and her experiences as a young female lawyer in an insular profession, can really only be understood if one remembers the climate in which her most important judgments were produced. Judicially, she found herself for a full decade on a court in which the jurisprudential trajectory was criminal law. This concentration, perhaps an inevitable second chapter to the human rights-oriented Charter story launched by Chief Justice Dickson, exponentially expanded the rights of the accused and held the state to stricter account. It was not a comfortable philosophical environment for a judge whose sympathies lay openly with victims and the protection of the public. Her dissents or concurring opinions in this period unabashedly exposed her perplexed frustration with what she perceived to be an ideological unwillingness to appreciate that the presumption of innocence was rebuttable.

And so, with an increasingly powerful pen, she made the case for a different governing perspective. In a trail leading from her astonishment in *Seaboyer* that prior sexual history could ever be relevant to a complainant's consent; her outrage in *O'Connor* and *Osolin* that a complainant's privacy rights could so easily yield to a fishing expedition in search of an elusive "gotcha" thought or statement; and her astonishment in *Park*, *Ewanchuk*, and *Livermore* that a complainant's clothes and demeanour could so cavalierly be characterized as sexually inviting, all reflect her indomitable resistance to what she saw as a judicial flow of indifference to the rights of the victims of crimes.

She was unapologetic in her loyalty to the woman's voice. In family law, an area in which the Supreme Court seemed to curtail its transformative reach after

detonating *Ratbwell*, she raised it to operatic levels. In *Moge*, she paid judicial tribute to the economic sacrifice most wives paid on marriage; in *Willick* and *Young*, she elevated the rights of children to pre-eminent status; and in *Gordon v. Goertz* she gave custodial parents, mostly women, a sense of entitlement to the possibility of integrating reality with parental responsibility.

And in a national media and political climate dramatically more conservative in the 90s than it had been for almost two decades, she nonetheless dared to protect gay rights in *Mossop*; eschew historic male entitlements in *Yukon Order of Pioneers*; limit administrative power in *Baker*; challenge discriminatory tax structures in *Thibaudeau* and *Symes*; add dignity to equality in *Egan*; and, with Chief Justice McLachlin, build a wall between bias and neutrality in *RDS*.

In some sense, she paid the price for refusing to be guided by the prevailing winds. She was demonized by the right and by the defence bar, a vilification willingly stoked and fuelled by the press. On the other hand, her singularly steadfast commitment to the rights of women, children, and minorities earned her a place in history. Without her insistent insinuation of her unique judicial principles into a contrary philosophy, those principles would never have achieved the centrality they did because they were endorsed by a Supreme Court judge.

Judging from the grateful academic, judicial and public tributes swirling around her retirement, she will always be remembered for judicially protecting, sometimes at huge reputational cost, values which, while not always in "political" favour, always seemed to resonate comfortably with the public.

And this, in the end, is why her jurisprudence is so supremely relevant, because it connects, not contradicts, private lives to the law. Hers is, in short, the judicial triumph of common sense. No small feat.

Professor Constance Backhouse

Professor of Law, University of Ottawa

Madam Justice L'Heureux-Dubé's legacy to future generations

The retirement of Madam Justice Claire L'Heureux-Dubé provides timely cause for reflection about her extraordinary career as a Canadian judge. A path-breaking advocate of equality jurisprudence, Madam L'Heureux-Dubé has tirelessly and compassionately striven to eradicate discrimination in all its forms. Her courage in embracing the principles of social justice has been applauded by equality-seeking communities, and stridently critiqued in some other quarters.

I think I speak for a cross-section of feminist law students, lawyers, and judges when I say that many of us have viewed Madam Justice L'Heureux-Dubé as something of an icon. As a result of the decisions she has delivered, she has become an individual who represents a visible manifestation of feminism within a legal system where most of those in power avoid public expressions of support for feminism or the

women's movement. She has taken over the mantle of Madam Justice Bertha Wilson, Canada's first female and feminist Supreme Court Justice, whose judicial career was also spectacular. Madam Justice L'Heureux-Dubé has spread this distinguished mantle wider and further than ever before, extending its warmth and protection in increasingly creative directions.

Feminism has inspired backlash from its earliest origins. The decade of the 1990s and the early years of the first decade of the 21st century have produced remarkable outpourings of hostility. Those who have dared to claim feminism and its principles in public have occasionally become personal lightning rods for anti-feminist attack. It was onto Madam Justice L'Heureux-Dubé's shoulders that some of this unfair criticism fell. On our behalf, she withstood such treatment with stoicism and grace. For this, we remain in her considerable debt.

For the many young law students who seek to learn about how law can further progressive social change, and who wonder how they may shape their own careers to become advocates for social justice, there is no finer example than Madam Justice L'Heureux-Dubé. Her continuing optimism, idealism, and energy provide the sort of inspiration that transforms those who come after her. As we seek to advance equality on the basis of gender, race, ethnicity, class, dis/ability, linguistic rights and sexual identity, it is Madam Justice L'Heureux-Dubé's leadership that will set the foundation upon which young law students, lawyers, and judges will continue to build. For generations to come, we will be striving to equal her record.

The law faculty and students at the University of Ottawa intend to pay tribute to Madam Justice Claire L'Heureux-Dubé, and to carry on her critical work, with the establishment of the Claire L'Heureux-Dubé Fund for Social Justice. The special projects we hope to launch include the publication of books on her judicial opinions; historical research into the careers of women lawyers and judges; summer programs to connect law students, social justice litigators, and community activists; clinical law programs for disadvantaged communities; workshops and speakers; pro bono test case litigation; international linkages; and the recruitment of students from under-represented communities.

Andrew J.F. Lenz

Perley-Robertson, Hill & McDougall (Ottawa)

clerking for Madam Justice L'Heureux-Dubé: *a memoir*

I served as a clerk for Madam Dubé during the 1991-1992 session. To say that I learned much about the law from Madam Dubé during that year would be a colossal understatement. However, it would not be quite accurate to say that, in retrospect, the most memorable aspects of my legal formation that year pertained to issues of substantive law. To be sure, there were many interesting cases which the Court heard that year, and I had the benefit of looking at the various issues which many of those cases raised in some depth. It goes without saying that discussions that I had with Madam Dubé on late afternoons in her office looking out over the Ottawa River relating to those issues have remained with me. From time to time today, an issue will arise in the context of my own

practice which sounds familiar and which will evoke one of those conversations and a case which we discussed some ten or eleven years previously.

Nonetheless, I have come to believe that the most important lessons I learned from Madam Dubé relate to those qualities which have made her such a stalwart supporter of the International Commission of Jurists. Space does not permit a comprehensive list of those lessons, nor for that matter, do I believe that I will ever really be able to catalogue the entire sum of what I took from my 16 months of clerkship and an ongoing friendship. In the space permitted I would simply like to mention a couple of the enduring lessons I took from her.

First and foremost, I learned from Madam Dubé that while the law is an abstraction, the human effect of that abstraction is not. In the discussions which I had with her relating to various cases on which she was working, Madam Dubé never ignored the fact (or failed to remind me) that there were actual living, breathing human beings out there who would be called upon to live in conformity with and apply the decisions reached by the Supreme Court of Canada. As such, decisions needed to be practical and, above all, could not afford to ignore the day-to-day concerns of Canadians.

Secondly, and just as importantly, Madam Dubé served as an example of an indefatigable work ethic. Almost invariably, no matter how early I arrived at the Court she was already there, and no matter how late I left she was still in her office. In an institution which toils she did not cease, and we all marvelled at her energy and her sheer force of will. No matter what the circumstances, Madam Dubé continued to put in hours and hours of effort both in the context of her regular duties at the Court and in the context of her many outside activities including her involvement with the Commission.