

---

# Les conférences de la revue

---

**Troisième conférence,  
prononcée par Madame Constance Backhouse  
Professeure à la Faculté de droit de l'Université d'Ottawa  
Le 4 décembre 2017**



# Claire L'Heureux-Dubé: Controversial Judge on a Controversial Court in a Controversial Time

*Constance BACKHOUSE\**

**Claire L'Heureux-Dubé:  
une juge et une cour controversées en des temps controversés**

**Claire L'Heureux-Dubé:  
una Jueza controvertida, en una corte y un período controvertidos**

**Claire L'Heureux-Dubé:  
uma Juíza Controversa em uma Corte Controversa em um Tempo Controverso**

**Claire L'Heureux-Dubé:  
争议时代的争议法院的争议法官**

---

## Résumé

Claire L'Heureux-Dubé occupe une place de choix dans l'histoire du droit canadien, car elle a été la première Québécoise, et la deuxième femme, nommée juge à la Cour suprême du Canada. Son dynamisme, sa vigueur et ses opinions controversées, au sein d'une cour controversée, au cours d'une période de controverses, ont laissé une marque indélébile. Ses décisions uniques, dont plusieurs ont accordé aux femmes des droits ou une protection sans précédent, ont été à la fois applaudies et critiquées vertement pen-

## Abstract

Claire L'Heureux-Dubé holds an important position in Canadian legal history as the first Québécoise, and the second female judge, to be appointed to the Supreme Court of Canada. She left an indelible record as one of the most dynamic, forceful, and controversial judges on a controversial court in a controversial time. Her unique judgments, many of which extended unprecedented rights and protections to women, were both applauded and roundly criticized during her term on the court. Characterized as

---

\* Professor of Law, University Ottawa.

dant qu'elle siégeait à la Cour. Qualifiée de «Grande dissidente», elle a obtenu une immense notoriété, au Canada comme sur la scène internationale.

## Resumen

Claire L'Heureux-Dubé ocupa un lugar prominente en la historia del derecho canadiense, ya que fue la primera quebequense y la segunda mujer, nombrada jueza de la Corte Suprema de Canadá. Su dinamismo, su vigor y sus opiniones controvertidas en el seno de una corte controvertida durante una época de controversias, dejaron una huella permanente. Sus decisiones únicas, muchas de las cuales otorgaron a las mujeres derechos o una protección sin precedentes, fueron a la vez aplaudidas y criticadas vigorosamente mientras integraba la corte. Calificada de «Gran Disidente», ella obtuvo una gran notoriedad tanto en Canadá como en la escena internacional.

“the Great Dissenter,” her notoriety catapulted her to attention across Canada and internationally.

## Resumo

Claire L'Heureux-Dubé detém uma posição importante na história do direito canadense como a primeira quebequense e segunda juíza mulher nomeada para a Suprema Corte do Canadá. Seu dinamismo, seu vigor e suas opiniões controversas, no quadro de uma corte controversa, ao longo de um período de controvérsias, deixaram marca indelével. Seus julgamentos únicos, muitos dos quais estenderam direitos e proteções legais sem precedentes às mulheres, foram tanto aplaudidos como veementemente criticados durante seu mandato na corte. Qualificada de “Grande Dissidente,” ela obteve uma imensa notoriedade, no Canadá e internacionalmente.

## 摘要

Claire L'Heureux-Dubé不仅是加拿大最高法院历史上第一位来自魁北克的女法官，而且还是该院的第二位女法官。她在加拿大法律史上占有重要地位。身处争议时代、作为充满争议的最高法院最活跃、最有魄力和最有争议的一名法官，她留下了不可磨灭的记录。她在任期间作出的独到的裁判意见，其中许多史无前例地扩展了妇女的权利和对妇女的保护，受到了毁誉参半的评价。她以“伟大的异议者”著称，她的名气让她一跃成为全加拿大乃至全世界的焦点。

# Table of Contents

<b>Introduction .....</b>	<b>281</b>
<b>I. The <i>Ewanchuk</i> Case.....</b>	<b>281</b>
<b>II. The Appeal to the Supreme Court of Canada .....</b>	<b>283</b>
<b>III. The Eruption that Followed .....</b>	<b>284</b>
<b>IV. Claire L'Heureux-Dubé: A Life.....</b>	<b>287</b>
<b>V. Friction on the Court: Antonio Lamer and Claire L'Heureux-Dubé .....</b>	<b>290</b>
<b>VI. The Unsettling Aftermath of <i>Ewanchuk</i>.....</b>	<b>293</b>
<b>Conclusion .....</b>	<b>300</b>



Claire L'Heureux-Dubé's remarkable status as an icon and lightning rod on the Supreme Court of Canada reached its zenith with the notorious *Ewanchuk* case in 1999.<sup>1</sup> The controversial sexual assault case catapulted her onto the front pages of the newspapers and plunged her into the centre of public debates across the land. The case would eventually become so well-known that it captured two memorable tag lines of its own: "the bonnet and crinolines case" and "No means No."<sup>2</sup>

## I. The *Ewanchuk* Case

In June 1994, a seventeen-year-old woman who wanted a part-time job came to an Edmonton mall for a hiring interview. Forty-four-year-old Steve Ewanchuk lured her to his private trailer in the parking lot. He closed the door, explained that he was an "affectionate" employer, hugged her, and asked her to give him a massage. The complainant was half his age and size. She testified that she did as he asked because she was scared. Every time Ewanchuk escalated his advances, the complainant said "no" or "stop," often with tears in her eyes. He would stop momentarily, and then begin again. The complainant told the court she believed that if Ewanchuk knew how afraid she was, it would increase the risk of a violent sexual assault. She lay "bone straight" as he pushed her backwards and began to "grind his pelvis into hers." Ewanchuk took his penis out of his shorts and stuck it between her legs, rubbing against her vaginal area. When she

---

<sup>1</sup> *R. v. Ewanchuk*, [1999] 1 S.C.R. 330 [*Ewanchuk*, [1999]], reversing *R. v. Ewanchuk*, [1998] 6 W.W.R. 8 (Alta. C.A.), dismissing an appeal from an acquittal by Justice John C. Moore [*R. v. Ewanchuk*, [1998]]. For more details, see: Constance Backhouse, *Claire L'Heureux-Dubé: A Life* (Vancouver: University of British Columbia Press, 2017) at chapters 1 and 36 [Backhouse "A Life"].

<sup>2</sup> Hester Lessard, "Farce or Tragedy?: Judicial Backlash and Justice McClung", (1999) 10-3 *Constitutional Forum* 65 [Lessard]; Joanne Wright, "Consent and Sexual Violence in Canadian Public Discourse: Reflections on *Ewanchuk*" (2001) 16-2 *Canadian Journal of Law and Society* 173; Rebecca Johnson, "The Persuasive Cartographer: Sexual Assault and Legal Discourse in *R. v. Ewanchuk*", in Gayle M. MacDonald, ed., *Social Context and Social Location in the Sociology of Law*, (Peterborough: Broadview Press, 2002) at 247; Sheila McIntyre, "Personalizing the Political and Politicizing the Personal: Understanding Justice McClung and his Defenders", in Elizabeth Sheehy, ed., *Adding Feminism to Law: The Contributions of Justice Claire L'Heureux-Dubé* (Toronto: Irwin Law, 2004) at 313 [McIntyre]; Constance Backhouse, "The Chilly Climate for Women Judges: Reflections on the *Ewanchuk* Decision", (2003) 15-1 *Canadian Journal of Women and the Law* 167.

objected once more, Ewanchuk ceased, saying: “See, I’m a nice guy, I stopped,” and let her leave.<sup>3</sup>

She reported Ewanchuk to the police, who knew her assailant well. Ewanchuk had been convicted of sexual assault four times previously, and would later be quoted in the press as saying that women were “one of [his] weaknesses,” that it was “like placing a drink in front of an alcoholic.”<sup>4</sup> Charges were laid, and the trial judge found as a fact that the complainant had not actually consented. Then he acquitted Ewanchuk upon the notion of “implied consent,” concluding that the young woman had failed to communicate her fear by words, gestures, or facial expressions.<sup>5</sup>

The Alberta Court of Appeal upheld the acquittal. Justice John Wesley McClung’s majority decision contained a series of statements that many interpreted as a direct attack on the foundation of women’s right to sexual autonomy. He ignored the number of times that the complainant had said “no.” He emphasized that she had had a child out of wedlock and was living common-law. He critiqued feminist slogans such as “No means No.” He stated that “in a less litigious age, going too far in the boyfriend’s car was better dealt with on site – a well-chosen expletive, a slap in the face, or, if necessary, a well-directed knee.” He described Ewanchuk’s advances as “clumsy passes” in aid of “romantic intentions” that were more “hormonal” than “criminal.” He rebuked the complainant for dressing in shorts, stressing that she “did not present herself to Ewanchuk or enter his trailer in a bonnet and crinolines.”<sup>6</sup>

<sup>3</sup> *Ewanchuk* [1999], *supra* note 1 at 339-43, 368-9; *Ewanchuk* [1998], *supra* note 1 at 23-49; *R. v. Ewanchuk* (2002), 164 C.C.C. (3d) 193 (Alta. C.A.) at 21 [*Ewanchuk* (2002)].

<sup>4</sup> Ewanchuk had been convicted of sexual assault involving intercourse in 1989 and of rape three times in the 1960s and 70s. *R. v. Ewanchuk* (2000), 276 A.R. 49 (Alta. Q.B.) at 55; *Ewanchuk* (2002), *supra* note 3. Anne Marie Owens “Attacker awaiting sentence” *The National Post* (27 February 1999) A2.

<sup>5</sup> *Ewanchuk* [1999], *supra* note 1.

<sup>6</sup> *Ewanchuk* [1998], *supra* note 1. Justice John Wesley McClung wrote the majority decision. Justice Peter Foisey, agreeing with McClung on the result, wrote a short concurrence. Chief Justice Catherine Fraser dissented, declaring that Parliament had tried to reject the “discredited theory of ‘implied consent’” with no fewer than “three legislative attempts.” She insisted that Canadian women were “not walking around this country in a state of constant consent to sexual activity unless and until they say ‘No’ or offer resistance to anyone who targets them for sexual activity.”

## II. The Appeal to the Supreme Court of Canada

The Supreme Court of Canada heard the case in 1998. All nine judges agreed that McClung's ruling was wrong, and that Ewanchuk should be found guilty of sexual assault.<sup>7</sup> Justice L'Heureux-Dubé, the most senior judge next to Chief Justice Antonio Lamer, offered to write for the court. In the regular course, the chief justice generally deferred to seniority in assigning responsibility for the first draft.<sup>8</sup> Instead, Lamer gave the assignment to Justice Jack Major. L'Heureux-Dubé was upset at being passed over, and recalled: "I wanted to write *Ewanchuk*. Tony gave it to Major. I complained and said, 'I am the senior judge.'"<sup>9</sup> She wondered whether Major was chosen because he was a friend of McClung, a former colleague from the Alberta Court of Appeal. She also wondered whether Lamer, known to be a hunting pal of McClung's, was trying to shield the latter from critique.<sup>10</sup> When Major circulated his draft, in which he stated that there was no legal basis for implied consent to sexual assault but offered no other critique of McClung's ruling, L'Heureux-Dubé was even more upset. She believed McClung's intemperate language cried out for comment, and decided to draft her own separate opinion, concurring in the result with expanded reasons. She was able to convince only one colleague, another Quebec judge, Justice Charles Gonthier, to sign on.

If McClung's flamboyant decision had been a most unusual judgment, L'Heureux-Dubé's decision was also unprecedented in its frankly feminist analysis. She identified the case as rooted in women's and children's equality rights, citing statistics about the pervasiveness of sexual violence in Canada, with 99% of the offenders male and 90% of the victims female. She

<sup>7</sup> Constance Backhouse, Interview with Claire L'Heureux-Dubé, Ottawa, 30 June 2010 [Backhouse "Interview 30 June 2010"].

<sup>8</sup> According to L'Heureux-Dubé, the process of deferring to the more senior judge was a matter of custom rather than firm rule, and could shift over time and according to the wishes of the chief justice. Constance Backhouse, Interview with Claire L'Heureux-Dubé, Clearwater Florida, 10-14 May 2009 [Backhouse "Interview 10-14 May 2009"].

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* On the friendship between Lamer and McClung, see: Kirk Makin "Close ties cloud process of judges judging judges" *The Globe and Mail* (8 March 1999) A4: "When in Alberta, the Chief Justice of Canada can sometimes be found shooting ducks out of the sky with his friend – Mr. Justice John McClung of the Alberta Court of Appeal." Makin also described Jack Major as "a close friend of Judge McClung." See also: "Hardly impartial" *The National Post* (10 March 1999) A19, describing Jack Major as "a crony of Judge McClung."

referred to international human rights instruments that urged signatory countries, including Canada, to implement effective legal measures against sexual assault, along with “gender-sensitive training of judicial and law enforcement officers.” She cited the research of feminist legal scholars Catherine MacKinnon, Christine Boyle, and Elizabeth Sheehy.<sup>11</sup>

She critiqued the sexism inherent in the lower court decisions, derived from “mythical assumptions” that portrayed women who said no as “really saying ‘yes,’ ‘try again,’ or ‘persuade me.’” She objected to McClung’s references to “romantic intentions” and “clumsy passes” and his characterization of the assault as “far less criminal than hormonal.” She refuted McClung’s suggestion that a woman should have to “fight her way out” of sexual assault, using physical force like “a well-directed knee.”<sup>12</sup>

### III. The Eruption that Followed

The day after L’Heureux-Dubé’s decision was released, the public furor broke out. The *National Post* printed an extraordinary “open letter” from McClung that mounted a personal attack upon L’Heureux-Dubé for “feminist bias” and a “graceless slide into personal invective.” McClung noted that “personal convictions” delivered “again from her judicial chair” could be responsible for the “disparate (and growing) number of male suicides being reported in the Province of Quebec.”<sup>13</sup> The reference to suicide seemed inexplicable until it was disclosed that L’Heureux-Dubé’s husband had committed suicide in 1978.<sup>14</sup> McClung’s letter was the first missive, but not the last, and the media swelled with criticism of L’Heureux-Dubé. Support for her decision then surfaced to counter the critique. The *National Post* and *The Globe and Mail* each published twenty articles about the *Ewanchuk* decision within fourteen days from its release.<sup>15</sup>

The *National Post* quoted a spokesperson from the socially conservative REAL Women of Canada, who insisted that Canadians “shouldn’t have to pay the salary of a radical feminist who sits on the bench and uses

<sup>11</sup> *Ewanchuk* [1999], *supra* note 1 at 361-79.

<sup>12</sup> *Id.* at 369-79.

<sup>13</sup> Justice John W. McClung “Right of reply” *The National Post* (26 February 1999) A19.

<sup>14</sup> For details see: Backhouse, “A Life”, *supra* note 1 at chapter 21.

<sup>15</sup> For details on the coverage in the press see: *Id.* at chapters 1 and 36.

her position to promote her own personal agenda.”<sup>16</sup> Then REAL Women filed a complaint of judicial misconduct against L'Heureux-Dubé with the Canadian Judicial Council.<sup>17</sup> The *Ottawa Citizen* editors characterized L'Heureux-Dubé as “the Supreme Court’s resident zealot” and her decision as “feminist cant” that read “less like a Supreme Court judgment on a specific case than a manifesto on feminist legal theory.”<sup>18</sup> Even stronger critique came from Edward Greenspan, one of the best-known defence lawyers in Toronto. His letter to the editor in the *National Post* began: “When the Supreme Court judges swore their oath... [t]hey were not given the right to pull a lower court judge’s pants down in public and paddle him.” It continued:

By labelling Judge McClung, in effect, the male chauvinist pig of the century, the chief yahoo from Alberta, the stupid, ignorant, ultimate sexist male jerk, Judge L'Heureux-Dubé did an unnecessary and mean-spirited thing.... Judge L'Heureux-Dubé drew first blood and whatever he said will not be recorded in Canadian judicial history like her vicious comments about him will... It is clear that the feminist influence has amounted to intimidation, posing a potential danger to the independence of the judiciary... Feminists have entrenched their ideology in the Supreme Court of Canada and have put all contrary views beyond the pale. ... Judge L'Heureux-Dubé was hell-bent on re-educating Judge McClung, bullying and coercing him into looking at everything from her point of view.... Madam Justice L'Heureux-Dubé has ... disgraced the Supreme Court.<sup>19</sup>

An Alberta radio talk show calculated that 90% of the callers supported McClung.<sup>20</sup> Even Steve Ewanchuk got into it. He told the *Toronto Star*: “Mrs. Dubé, she never should’ve said what she said about him being an archaic and ignorant man, because he’s not. She started it. What came back to her, personally, is something she started. Not him.”<sup>21</sup>

<sup>16</sup> Shawn Ohler “Women’s Group Turns Tables on L'Heureux-Dubé” *The National Post* (4 March 1999) A5 [Ohler].

<sup>17</sup> Canadian Judicial Council, Council File 98-129, 31 March 1999 [Canadian Judicial Council “File 98-129”] (copies can be obtained from the CJC: <info@cjc-ccm.gc.ca> or write to Canadian Judicial Council, 150 Metcalfe St., Ottawa, Ontario, K1A 0W8).

<sup>18</sup> “Consent Means Consent” *The Ottawa Citizen* (2 March 1999) A14; “Judging the Judges” *The Ottawa Citizen* (3 March 1999) A13.

<sup>19</sup> Edward L. Greenspan “Judges Have No Right to Be Bullies” *The National Post* (2 March 1999) A18.

<sup>20</sup> Ohler, *supra* note 16 at A6.

<sup>21</sup> Tonda MacCharles “Judge ‘Sorry’ for Outburst” *The Toronto Star* (2 March 1999) A7.

Those who defended L'Heureux-Dubé emphasized that she was being “demonized” for exposing the sexism of a senior male judge.<sup>22</sup> Montreal's *La Presse* characterized McClung's letter as “*une sortie publique sans précédent dans l'histoire juridique canadienne*.”<sup>23</sup> One reporter from *The Globe and Mail* speculated that McClung would never have cast such aspersions upon a male judge.<sup>24</sup> Indeed, the name of Charles Gonthier, who had signed L'Heureux-Dubé's opinion, never came up. Laval law professor Ann Robinson explained that the Québécois viewed McClung's shocking response as doubly insulting: “an attack on women” and also “an attack from an Anglophone on a Francophone,” emphasizing that in Quebec, linguistic issues were understood to be inextricably intertwined with sexism.<sup>25</sup> University of Ottawa law professor Nathalie Des Rosiers praised L'Heureux-Dubé as the “*miroir de son époque*” and her decision for recognizing that “*les femmes ne sont pas des objets sexuels mais des agents de leur sexualité*.”<sup>26</sup> A *Law Times* editorial added: “Male judges have been driven by their own assumptions and ideologies – most of us call them biases – for eons. Only now that we've had a few women sit on the Supreme Court of Canada have gender biases become politically unacceptable.”<sup>27</sup> Twenty-four individuals and organizations filed complaints of judicial misconduct against McClung with the Canadian Judicial Council.<sup>28</sup>

The controversy expanded well beyond national borders. California Federal Court of Appeals Justice Alex Kozinski added:

The only dismaying thing about the Supreme Court's decision is that most of the other justices did not see fit to condemn Judge McClung's unfortunate language. But there is a very significant difference between disagreeing with

<sup>22</sup> McIntyre, *supra* note 2; Lessard, *supra* note 2.

<sup>23</sup> Jules Richer “La juge L'Heureux-Dubé refuse de répliquer au juge McClung” *La Presse* (9 March 1999) B4.

<sup>24</sup> Constance Backhouse, Interview with *Globe and Mail* reporter Sean Fine, Toronto, 8 April 2015.

<sup>25</sup> Constance Backhouse, Interview with Ann Robinson, Ottawa, 17 September 2008.

<sup>26</sup> Nathalie Des Rosiers, “Être le miroir de son époque: la primauté du droit, la critique égalitaire, et la contribution de Madame la juge L'Heureux-Dubé”, in Elizabeth Sheehy, ed., *Adding Feminism to Law: The Contributions of Justice Claire L'Heureux-Dubé* (Toronto: Irwin Law, 2004) at 122.

<sup>27</sup> “Explicit Bias” *The Law Times* (8-14 March 1999) 6.

<sup>28</sup> Canadian Judicial Council, Council File 98-128, 19 May 1999 (copies can be obtained from the CJC: <info@cjc-ccm.gc.ca> or write to Canadian Judicial Council, 150 Metcalfe St., Ottawa, Ontario, K1A 0W8).

someone's words and ideas, and descending into personal invective. It is a line Justice L'Heureux-Dubé respected scrupulously. Unfortunately, Mr. Greenspan and Judge McClung did not.<sup>29</sup>

L'Heureux-Dubé's *Ewanchuk* decision was attacked as dead wrong by some and as the gold standard in sexual assault jurisprudence by others. No Supreme Court judge had previously been so publicly vilified and praised at the same time. Her Supreme Court colleague Justice Michel Bastarache, remarking on L'Heureux-Dubé's "colourfulness" and "flair," summed it up well: "She leaves no one indifferent."<sup>30</sup> Who was the woman behind the *Ewanchuk* decision? How did she ascend to such legendary stature, ground zero for the pitched battles over sexual consent, reviled and revered at the same time, icon and lightning rod to Canadians across the country?

#### IV. Claire L'Heureux-Dubé: A Life<sup>31</sup>

Claire L'Heureux-Dubé was born in Quebec City in 1927, and spent her childhood in Rimouski. She received her primary and secondary education as a convent boarding pupil at the cloistered Monastère des Ursulines and the Collège Notre-Dame-de-Bellevue, where she excelled as one of their most academically gifted pupils. She was the ninth woman to graduate from Laval University in law in 1951, and the only woman to enter private practice in Quebec City in 1952. She became the first woman to establish a successful law practice there, but only because she received a job offer from Samuel Schwarz Bard, one of the only Jewish lawyers practising in Quebec City, at a time when no French-Canadian lawyer would hire her. She did not let her marriage derail her career, partnering at age thirty-one with Arthur Dubé, a brilliant Laval engineering professor who supported her decision to continue practice even after the birth of their two children. Her trail-blazing business law practice (much of it conducted for Jewish clients), and her switch to divorce practice after the 1968 *Divorce Act* reshaped family law in Quebec, brought her to prominence as the

<sup>29</sup> Alex Kozinski "An unfair attack on a decent judgment" *The National Post* (8 March 1999) A18.

<sup>30</sup> Constance Backhouse, Interview with Michel Bastarache, Ottawa, 24 November 2009 [Backhouse "Interview with M. Bastarache"].

<sup>31</sup> All references for the following section can be found in Backhouse "A Life", *supra* note 1.

capital city's most illustrious female lawyer. Despite her professional success, she also suffered the anguish of witnessing her husband's battle with depression, alcoholism and suicide, and dealing with her son's juvenile delinquencies and premature death in a hospital lock-up.

She received judicial appointments at the hands of three different federal governments, to become the third woman appointed to a Superior Court in Canada in 1973 (the first in Quebec City), the first woman on the Quebec Court of Appeal in 1979, and the second on the Supreme Court of Canada in 1987. In none of those elevations does she seem to have been the preferred candidate of the bar or bench. She had begun her career before the Quiet Revolution transfigured Quebec, but by the time she was appointed a judge, feminism was growing in influence, particularly in Quebec. She did not identify herself as a feminist, but she was on the cusp of change. When political, social, and cultural pressures began to impact upon the legal world, and pressure mounted to put a woman on the bench, Claire L'Heureux-Dubé was the obvious candidate.

She joined the Supreme Court of Canada as an appellate judge with a reputation for impeccable research, striking powers of organization, an elegant command of written French, and a formalistic philosophy of law. Fifteen years later, she left the court having amassed an appreciation for social science evidence, a focus on the real-world impact of judicial rulings, and a penchant for novel equality claims. There are many theories that may help to account for the observable changes in jurisprudence that marked her trajectory. The impact of the Charter, the wider context in which equality rights were being analyzed, the evolving role of the law clerks who assisted the Supreme Court judges, and the contributions of interveners who began to present innovative *amicus curiae* briefs in social justice cases, have all been suggested as contributing factors.<sup>32</sup> It was an era of dramatic change for the top court, as debates raged across Canada over the role of unelected "activist" judges in refashioning the law based on Charter principles. Some supported, and others bemoaned, the post-Charter transformation of the Supreme Court from a "cautious, narrow, and legalistic" body to an institution "at the centre of political life in Canada."<sup>33</sup> Claire L'Heureux-Dubé was one of the judges most inclined to

<sup>32</sup> For further discussion, see: Backhouse "A Life", *supra* note 1.

<sup>33</sup> Robert J. Sharpe & Kent Roach, *Brian Dickson: A Judge's Journey* (Toronto: University of Toronto Press, 2003) at 5.

embrace the new directions, but she also distinguished herself as the “Great Dissenter,” willing to deliver decisions that went well beyond where others were inclined to go.<sup>34</sup> “In her own zone” was the phrase that Jack Major chose to describe his colleague.<sup>35</sup>

One of the explanations for L'Heureux-Dubé's growing reputation as the “Great Dissenter” who parted company from most of her colleagues must surely be the sense of isolation she felt at the Supreme Court. She was no stranger to an “outsider” status, in law school, in law practice, and on the bench. But this became more intense than ever on the Supreme Court.

Both Bertha Wilson (the first woman appointed to the Supreme Court in 1982) and L'Heureux-Dubé (appointed five years later) found their tenure dogged by challenges rooted in sex discrimination. They suffered incidents of sexist treatment from their fellow judges, overt hostility from lawyers, legal academics, and media reporters, as well as an unprecedented series of unfounded complaints of judicial misconduct.<sup>36</sup> The two women felt forced to prove themselves, over and over again, to a group of men who were skeptical about their ability to do a “man's job.”<sup>37</sup>

Yet gender is always complicated by intersectionality, and at the Supreme Court, L'Heureux-Dubé's status was also differentiated because of her identity as a Francophone from Quebec. Her French-Canadian heritage, and her coming of age in an increasingly nationalistic Quebec, deepened the outsider identity. She described it as “two solitudes,” with the English-speaking judges from the rest of Canada having virtually “no knowledge of what we do [or] what we write in Quebec.”<sup>38</sup> Because there

---

<sup>34</sup> Marie-Claire Belleau & Rebecca Johnson, “Judging gender: difference and dissent at the Supreme Court of Canada”, (2008) 15-1-2 *International Journal of the Legal Profession* 60.

<sup>35</sup> Constance Backhouse, Interview with Jack Major, Calgary, 13 November 2013 [Backhouse “Interview with J. Major”].

<sup>36</sup> See: Backhouse “A Life”, *supra* note 1; Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: University of Toronto Press, 2001) [Anderson]; Constance Backhouse, “Justice Bertha Wilson and the Politics of Feminism”, in Jamie Cameron, ed., *Reflections on the Legacy of Justice Bertha Wilson* (Markham: LexisNexis, 2008) at 33-52.

<sup>37</sup> Anderson, *supra* note 36 at 127, 154; Constance Backhouse, Interview with Claire L'Heureux-Dubé, Quebec City, 11 July 2016.

<sup>38</sup> Backhouse “Interview 10-14 May 2009”, *supra* note 8. See also: Stephen Bindman, “Judging in a Man's World”, *The Ottawa Citizen* (13 April 1992) A3 [Bindman].

was no requirement that all Supreme Court judges be bilingual, there were always some judges who were unable or unwilling to speak French. As a matter of practice, the working language for judicial deliberations frequently defaulted to English.<sup>39</sup> L'Heureux-Dubé, who was proficiently bilingual, could function well in such a setting, but it was an undeniably an added strain to have to work primarily in English. One of L'Heureux-Dubé's law clerks also recalled that some of the Anglophone clerks nicknamed her "Happy-Doobie," their disrespectful translation of her French name.<sup>40</sup>

She often lamented having left the Quebec Court of Appeal, whose judges she described as "much more social" than those in Ottawa, adding: "*C'est la joie de vivre*."<sup>41</sup> "When [Quebec] judges talk about the Supreme Court of Canada, they just roll their eyes," she explained. "It's not the same world. French values are totally different from the English. French-Canadians have a sense of community that the others don't have."<sup>42</sup> As if to emphasize her point, she adverted to the experiences of two predecessor Quebec judges, Louis-Philippe de Grandpré and Yves Pratte, who had both resigned from the top court after a brief tenure. She was, she emphasized, "not the only casualty."<sup>43</sup>

## V. Friction on the Court: Antonio Lamer and Claire L'Heureux-Dubé

One Quebec judge who did not seem to be troubled by the same feeling of outsider status was Antonio Lamer. Ironically, it was Lamer who became L'Heureux-Dubé's long-term nemesis on the court. The friction that developed between the two seems to have pushed each of them further apart on the cases. It also appears to have played a significant role in the way that the *Ewanchuk* case unravelled.<sup>44</sup>

<sup>39</sup> Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press, 2005) at 373.

<sup>40</sup> Constance Backhouse, Interview with Peter Sankoff, Ottawa, 27 June 2014 [Backhouse "Interview with P. Sankoff"].

<sup>41</sup> Backhouse "Interview 10-14 May 2009", *supra* note 8; Bindman, *supra* note 38.

<sup>42</sup> Constance Backhouse, Interview with Claire L'Heureux-Dubé, Quebec City, 27-28 April 2009 [Backhouse "Interview 27-28 April 2009"].

<sup>43</sup> Backhouse "Interview 10-14 May 2009", *supra* note 8.

<sup>44</sup> For further details, see: Backhouse "A Life", *supra* note 1 at chapters 27 and 28.

Antonio Lamer's formative years were spent in Montreal's east end where, as he was fond of saying, "everyone on his block except himself and another boy (who became a dentist) went to the penitentiary."<sup>45</sup> He practised law in Montreal, where he distinguished himself as a brilliant criminal defence counsel deeply concerned about the abuses that the police perpetrated upon his clients.<sup>46</sup> He also taught criminal law at the University of Montreal, where one of his law students, Louise Arbour, recalled him as "far ahead of his time in terms of his outlook on abuse of power by the state."<sup>47</sup> Appointed to the Supreme Court seven years before L'Heureux-Dubé (and later elevated to become the top court's chief justice from 1990 to 2000), Lamer was one of the judges most strongly opposed to her appointment. "I knew from law clerks at the time that Lamer had mentioned if I were appointed, he would resign," L'Heureux-Dubé recalled. "He apparently said to the other judges, it would be over his dead body."<sup>48</sup>

Part of the conflict may have had to do with L'Heureux-Dubé's dismissive attitude toward criminal law, Lamer's specialty.<sup>49</sup> "I found criminal law simple," she would state. "No nuances. [You could] learn it by osmosis."<sup>50</sup> There were equally significant problems regarding equality law. Lamer was "not a feminist," according to a former law clerk, and his contributions on the top court "did not include leadership in responding to

---

<sup>45</sup> William H. McConnell, *William R. McIntyre: Paladin of the Common Law* (Montreal: McGill University Press, 2000) at 82; Hon. J.J. Michel Robert, "Antonio Lamer: The Man, His Life and Times", in Adam Dodek & Daniel Jutras, eds., *The Sacred Fire: The Legacy of Antonio Lamer* (Markham: LexisNexis, 2009) at 3-4 [Dodek & Jutras].

<sup>46</sup> Constance Backhouse, Interview with Danièle Tremblay-Lamer, Ottawa, 12 March 2015 [Backhouse "Interview with D. Tremblay-Lamer"], widow of Antonio Lamer and a former law clerk of his, who agreed to speak with the author to provide some background context on the relationship between the two judges. Interview with Marie-Claire Belleau, Ottawa, 11 December 2013, first law clerk for L'Heureux-Dubé, who phrased it as follows: "Justice L'Heureux-Dubé and Justice Lamer both took too much space."; Dodek & Jutras, *supra* note 45 at 3-4.

<sup>47</sup> Constance Backhouse, Interview with Louise Arbour, Lac Carré, Quebec, 24 July 2014.

<sup>48</sup> Backhouse "Interview 30 June 2010", *supra* note 7; Backhouse "Interview 27-28 April 2009", *supra* note 42; Constance Backhouse, Interview with Claire L'Heureux-Dubé, Ottawa, 30 June 2014.

<sup>49</sup> Criminal law was the subject of the largest number of decisions written by Lamer, and "a passion that began long before he came to the Supreme Court". Catherine Dauvergne, "Chief Justice Lamer's Leadership in Feminist Times", in Dodek & Jutras, *supra* note 45 at 369 [Dauvergne].

<sup>50</sup> Constance Backhouse, Interview with Claire L'Heureux-Dubé, 25 July 2008.

the challenge of legal feminism.”<sup>51</sup> Lamer’s motivation was to prevent the state from overreaching in criminal law, a philosophy honed and refined as a defence lawyer in Quebec during the Duplessis years. L’Heureux-Dubé had also lived through the Duplessis years, but she never practiced criminal law, and had never witnessed police abuses first hand. The traumas she dealt with on a day-to-day basis concerned battered women impoverished by divorce.

Lamer and L’Heureux-Dubé parted ways on many substantive legal issues in their years together on the court, but it was more than simply an ideological divide. Some observers explained it as based on temperament, that the two judges were simply too much alike. L’Heureux-Dubé and Lamer were both depicted as “vivacious,” “social,” and “flamboyant,” with personalities that seemed to “collide.”<sup>52</sup> And those tensions were exacerbated by sexism. People characterized Lamer as an outgoing man who displayed jovial *bonhomie*. L’Heureux-Dubé, with similar vivacity, was often seen to be transgressive because of her gender.<sup>53</sup>

Toronto *Globe and Mail* reporter Kirk Makin, who interviewed both Lamer and L’Heureux-Dubé at length during their tenure on the Supreme Court, explained the parallels and antipathies he observed:

They both sort of became perceived as caped crusaders of opposing forces. He was the lion of the defence bar. [S]he became the hero of Crowns [and] victims. [They were] both reformers in a different way. It’s part of her charm and part of what infuriated certain people, [that] she was just so out there about what she thought. [Then] picture Lamer, the way he was, sitting back. He was in a way her equal in terms of his lack of innate caution. They both were outliers in terms of [being] outspoken, uncaring, let it all hang out... They both are in a category of their own when it comes to candour, devil-may-care, flaunting of their viewpoint.<sup>54</sup>

Their Supreme Court colleagues were well aware of the acrimony. Jack Major acknowledged that Lamer and L’Heureux-Dubé “were at odds most

<sup>51</sup> Dauvergne, *supra* note 49 at 353, 377. Catherine Dauvergne qualified this statement by adding that Lamer did not meet feminist argument “with protracted resistance.”

<sup>52</sup> Backhouse “Interview with D. Tremblay-Lamer”, *supra* note 46.

<sup>53</sup> Constance Backhouse, Interview with Teresa Scassa, Ottawa, 16 May 2014; Backhouse “Interview with P. Sankoff”, *supra* note 40. Both Scassa and Sankoff were law clerks to L’Heureux-Dubé.

<sup>54</sup> Constance Backhouse, Interview with Kirk Makin, Toronto, 9 April 2015.

of the time,” and characterized it as “real animosity.”<sup>55</sup> Michel Bastarache depicted it as a “continuing feud.”<sup>56</sup> One law clerk recalled that the two judges “exchanged some unpleasant emails, the judicial equivalent of Armageddon.”<sup>57</sup> Other law clerks reported that one dispute between L'Heureux-Dubé and Lamer grew so intense that they could overhear him yelling at her, “No one wants you here. Why don't you just leave? You're nothing to the court. Why don't you resign?” She then shouted back, “I'm going to be here after you are. Do what you like.”<sup>58</sup> Even former Prime Minister Brian Mulroney was aware of the open rift, adding diplomatically: “She and Tony Lamer had some exchanges of views that I'm told were interesting.”<sup>59</sup>

## VI. The Unsettling Aftermath of *Ewanchuk*

How did the public maelstrom that followed *Ewanchuk* play out within this conflicted terrain? First McClung, the Alberta judge who had launched the intemperate attack on L'Heureux-Dubé, issued a public apology of sorts. He acknowledged that he had made “an overwhelming error” that he “deeply regret[ted],” and that there was “no justification” for his “indiscretion.” He explained that he had conveyed his apology directly to L'Heureux-Dubé, but then he attempted to defend himself again. He insisted that his reference to male suicide in Quebec was only meant to be a “facetious chide” and repeated his position that L'Heureux-Dubé's reasons for judgment had “provoked” him into writing the *National Post* in the first place.<sup>60</sup> A *Globe and Mail* columnist characterized it as a half-hearted apology from a man who blamed others for provoking him.<sup>61</sup>

<sup>55</sup> Backhouse “Interview with J. Major”, *supra* note 35.

<sup>56</sup> Backhouse “Interview with M. Bastarache”, *supra* note 30.

<sup>57</sup> Backhouse “Interview with P. Sankoff”, *supra* note 40. The child sexual abuse case of *R. v. F.F.B.*, [1993] 1 S.C.R. 697, offered a vehicle for two former L'Heureux-Dubé law clerks to explore some of the hostility that suffused the court during this era: Marie-Claire Belleau & Rebecca Johnson, “Faces of Judicial Anger: Answering the Call”, in Myriam Jézéquel & Nicholas Kasirer, eds., *Les sept péchés capitaux et le droit* (Montréal: Thémis, 2007) at 15.

<sup>58</sup> This anecdote is a composite description of several exchanges, offered by several law clerks who asked not to be identified.

<sup>59</sup> Constance Backhouse, Interview with Brian Mulroney, Montreal, 22 August 2013.

<sup>60</sup> *The Globe and Mail* (2 March 1999) A4.

<sup>61</sup> Margaret Bateman, “Spotlight on Judge McClung” *The Globe and Mail* (4 March 1999) A15.

Inside the court, the tension was palpable. The law clerks were shocked, some comparing it to staring at a train crash while being unable to tear their eyes from the wreckage.<sup>62</sup> Several of L'Heureux-Dubé's colleagues thought the best way to calm the roiling waters was for her to write to McClung acknowledging his apology, and release her letter publicly. Justice Frank Iacobucci spoke with L'Heureux-Dubé directly, recommending this course of action. L'Heureux-Dubé stood her ground and rejected his advice.<sup>63</sup> In fact, L'Heureux-Dubé was concerned about the lack of support from her colleagues at the court. Her daughter, Louise Dubé, who was privy to her mother's hurt at the time, explained: "I think she felt she was left alone and hung out to dry."<sup>64</sup> L'Heureux-Dubé would have preferred that Chief Justice Lamer defend the integrity of his court, publicly taking to task those who were insisting that "extreme feminist groups" had "overtaken" the nation's top court. Instead, Lamer remained silent.<sup>65</sup>

Then L'Heureux-Dubé circulated a memo to her colleagues, describing how Chief Justice Aharon Barak had risen to the defence of the Israeli Supreme Court when he offered a stinging public rebuke of unfair criticism directed at his court.<sup>66</sup> Lamer was incensed. He wrote to all of his colleagues, insisting that it was impossible for him, from his position as Chair of the Canadian Judicial Council, to comment on *Ewanchuk*, a case that had provoked complaints of judicial misconduct that would need to be adjudicated by that Council. His memo stated:

[M]y decision was to wait until the complaints have been disposed of and then, with your advice, decide whether to respond to these attacks and in what manner. I spoke to our colleague Mme Justice L'Heureux-Dubé, yesterday and told her how unfair I thought she was being indirectly accusing me of not coming to the defence of this Court. She told me others on this Court shared her views. I invite those persons to come forward and explain to me why and how I should respond now to the persons who have made such alleg-

<sup>62</sup> The law clerks who offered this comment asked to remain unidentified.

<sup>63</sup> Backhouse "Interview 30 June 2010", *supra* note 7; Constance Backhouse, Interview with Frank Iacobucci, Toronto, 26 October 2011.

<sup>64</sup> Constance Backhouse, Interview with Louise Dubé, Boston, 22 May 2012.

<sup>65</sup> Robert Fife, "MPs split over censuring McClung", *The National Post* (27 February 1999) A3, reported that neither the office of Justice L'Heureux-Dubé nor the office of Chief Justice Lamer had any comment to make.

<sup>66</sup> As described during the Interview with Claire L'Heureux-Dubé, Ottawa, 10 March 2010.

ations without (you know what the Press can do with this) being perceived as interfering with the disposition of the two complaints.<sup>67</sup>

In fact, the court that had been privy to such troubling hostilities between two of their colleagues was in turmoil itself over what response should be taken. *Globe* reporter Kirk Makin wrote: "To be sure, there is no love lost between the chief justice and Judge L'Heureux-Dubé. Yet, some legal observers believe that other members of the Supreme Court bench would have been happier had Chief Justice Lamer been in a position to defend Judge L'Heureux-Dubé against the recent attacks on her."<sup>68</sup> Whatever the truth of this, at least some of L'Heureux-Dubé's colleagues were less sympathetic, being of the opinion that her concurring opinion had gone "too far in dumping on the Alberta court," and that "the thing had got completely out of hand in both directions."<sup>69</sup>

Speaking some years later, retired Justice Melvin Rothman, one of L'Heureux-Dubé's former colleagues from the Quebec Court of Appeal, recalled that he had been "shocked" by the fallout from the *Ewanchuk* case. Rothman thought that the real reason why Lamer had not stepped forward to defend L'Heureux-Dubé was his personal antipathy toward her. "I don't think [former Chief Justice] Brian Dickson would have permitted for ten seconds what Tony permitted," he insisted. "[Lamer] couldn't get along with Claire. Anything said against her, to tear her down, he would have accepted."<sup>70</sup>

As it turned out, Lamer seems to have felt that he was too close to the issue even to adjudicate the *Ewanchuk* complaints at the Canadian Judicial Council. He stepped aside, leaving it to other judges to conduct the review.

---

<sup>67</sup> Memorandum to Members of the Court from The Chief Justice re "Role of the Chief Justice", 17 March 1999, copy in personal papers of Claire L'Heureux-Dubé, shared with the author. *Globe and Mail* reporter Kirk Makin agreed: "Since he is the chairman of the council that will ultimately decide the fate of both judges, Chief Justice Lamer has been prevented from publicly defending his own colleague." See: Kirk Makin "Close ties cloud process of judges judging judges" *The Globe and Mail* (8 March 1999) A4.

<sup>68</sup> *Id.*

<sup>69</sup> These judges were prepared to describe McClung's behaviour as "unfortunate," "inappropriate," and "totally out of line," but they also believed that L'Heureux-Dubé's decision was "a little inflammatory" and "quite vehement". Backhouse "Interview with J. Major", *supra* note 35; Backhouse "Interview with M. Bastarache", *supra* note 30; Constance Backhouse, Interview with Ian Binnie, Ottawa, 6 April 2011.

<sup>70</sup> Constance Backhouse, Interview with Melvin Rothman, Montreal, 12 August 2008.

The panel that was assembled to review McClung's behaviour "rebuked" him for his public outburst, but did not go so far as to recommend his removal from the bench.<sup>71</sup> L'Heureux-Dubé received a more favourable treatment. British Columbia Chief Justice Allan McEachern, who replaced Lamer as acting chair on the Council, undertook the initial review of the complaint against her. He concluded that there were no grounds to refer the case to a panel of judges for further examination, and dismissed the complaint outright.<sup>72</sup> Even after the dust had settled on that process, Lamer never broke his public silence.

As for L'Heureux-Dubé, the *Globe* described her as having "retreated into shocked silence as the attacks continued."<sup>73</sup> Years later, she admitted that never in her "wildest dreams" had she expected that her *Ewan-chuk* decision would inspire such controversy. "I didn't know McClung," she said, and had "nothing against him personally. I was not attacking McClung, but saying that the law cannot rely on myths and stereotypes."<sup>74</sup> In an interview with Laval law professor Louise Langevin in 2007, she added:

Je me suis demandé pourquoi moi j'ai été catégorisée? La réponse qu'on m'a donnée, « she is louder and clearer ». J'ai écrit selon mon tempérament, qui est clair, direct, pas ambigu et qui envoie le message de m'identifier beaucoup à l'égalité et aux droits des femmes.<sup>75</sup>

Years later, L'Heureux-Dubé spoke publicly about the strain the *Ewan-chuk* attack had placed upon her. In an interview with the *Lawyers' Weekly*, she explained that she thought she was "just doing [her] job" when she

<sup>71</sup> A panel composed of Nova Scotia Chief Justice Constance R. Glube, Quebec Chief Justice Pierre Michaud, and Ontario Chief Justice R. Roy McMurtry found that McClung's initial judicial decision crossed "the boundary of appropriate judicial expression" and that his criticism of the complainant was "simply unacceptable for a judge." They concluded that his letter to the *National Post* was "inappropriate," "impetuous" and "a significant indiscretion." They found the rationales he offered for his letter "not credible." As a whole, they concluded, McClung's conduct reflected "negatively on the judiciary." Canadian Judicial Council "File 98-129", *supra* note 17.

<sup>72</sup> *Id.*

<sup>73</sup> Kirk Makin & Graeme Smith "Gatecrashing the old boys club" *The Globe and Mail* (2 May 2002) A8 [Makin & Smith].

<sup>74</sup> Backhouse "Interview 30 June 2010", *supra* note 7.

<sup>75</sup> Louise Langevin, "Hon. L'Heureux-Dubé : Entrevue réalisée avec l'Hon. L'Heureux-Dubé", 26 mars 2007, Québec, Université Laval at 26.

wrote the *Ewanchuk* opinion.<sup>76</sup> “I was accused of being a bully, among other things,” she stated. “I feel that I was wrongly attacked ... and the message was, ‘Shut up!’”<sup>77</sup> An interview she gave to the *Globe* went further. “I don’t mind criticism of my judgments – that is part of the territory – but personal attacks? As far as I’m concerned, it’s not acceptable.”<sup>78</sup> She added:

I can tell you it hurt – because of the personal attacks on my family, my husband. The implication was that I was responsible. ... You know, you miss these people that you love. The attacks brought back all these memories. It was a very difficult period.<sup>79</sup>

McClung’s tirade would have been hurtful to anyone accused of causing suicide, but particularly so to L’Heureux-Dubé. She had never hidden the details of Arthur’s self-inflicted death in an era when most people were afraid to disclose anything about family suicide. She had suffered protracted grief over her husband’s death. To have the tragedy dredged up by people who knew nothing about Arthur, his illness, or their relationship, and then to be subjected to more wild rumours and innuendo must have been agonizing. On the eve of her retirement, L’Heureux-Dubé identified the sexism at the heart of the conflagration. “Strong women judges who dare speak out for equal rights are lightning rods for unfair criticism,” she told the *Lawyers’ Weekly*.<sup>80</sup> The male-dominated court had unanimously overruled McClung. Charles Gonthier had signed her concurring decision. Yet only she was excoriated. The anti-feminist REAL Women of Canada made no attempt to hide the overt sexism when its spokesperson was asked

<sup>76</sup> Cristin Schmitz “Dubé Speaks Out on *Ewanchuk* Controversy” *Lawyers’ Weekly* (10 May 2002) at 3 [Schmitz].

<sup>77</sup> *Id.*

<sup>78</sup> Makin & Smith, *supra* note 73.

<sup>79</sup> *Id.*

<sup>80</sup> Schmitz, *supra* note 76; Claire L’Heureux-Dubé, “Making a Difference: The Pursuit of a Compassionate Justice”, (1997) 31 *University of British Columbia Law Review* 1, 7. In this text, L’Heureux-Dubé added: “Women judges and adjudicators are finding themselves the targets of unfairly harsh criticism and allegations of bias, particularly – but not exclusively – when they have relied on a new perspective or more inclusive principles.” Law clerk David Wright wondered why it was that some of Lamer’s comments on issues relating to race – that the Chinese were gamblers, for example – which he articulated in open court during oral arguments, escaped public notoriety almost entirely; Constance Backhouse, Interview with David Wright, Toronto, 7 May 2014.

about Charles Gonthier. “REAL Women has no quarrel with him,” she told the press.<sup>81</sup>

The polarizing debate about sex, consent, and the role of the criminal law in responding to sexual assault was not settled in the wake of *Ewan-chuk*. L’Heureux-Dubé and Lamer continued to part ways in their jurisprudential approaches to criminal and equality law.<sup>82</sup> But the case served as a historically significant snapshot of what Canadians thought and were prepared to say about intimate sexual relations at the end of the twentieth century. L’Heureux-Dubé’s decision brought the defence bar’s notion of fairness in criminal law crashing down upon the feminist notion of gender equality. Justice Rosalie Abella, then an Ontario Court of Appeal judge who had been specifically targeted by the *National Post* as a “feminist friend” of L’Heureux-Dubé’s, reflected that “[i]t gave a lot of people an opportunity, a platform for saying things they wanted to say for a long time. It was the door that opened to feelings people had.”<sup>83</sup> Perhaps things had never been so raw, so explicit.

The flip side of the pain inflicted upon L’Heureux-Dubé post-*Ewan-chuk* was the adulation she received from those who believed her decision had advanced the cause of women’s sexual autonomy. During her last decade on the court, she was deluged with invitations to speak. When she appeared at law schools, she was welcomed by delegations of students and faculty who extolled her jurisprudential contributions. Queen’s law professor Don Stuart exclaimed: “Claire showed up and it was like the Queen had arrived.”<sup>84</sup> McGill law professor Pierre-Gabriel Jobin said: “She’s close to having the personality of a star, a diva maybe.”<sup>85</sup> At one women’s law conference, L’Heureux-Dubé arrived on stage and “the young women in the auditorium were on their feet. They were screaming...like what I would have imagined at the Beatles’ reception,” recalled one Halifax lawyer. At the end of her speech, L’Heureux-Dubé was bowled over by autograph-seekers.<sup>86</sup> At a 1999 celebration in Quebec City held to acknow-

<sup>81</sup> Ohler, *supra* note 16.

<sup>82</sup> Backhouse “A Life”, *supra* note 1 at chapter 28.

<sup>83</sup> Constance Backhouse, Interview with Rosalie Abella, Ottawa, 9 November 2007.

<sup>84</sup> Constance Backhouse, Interview with Don Stuart, Kingston, 4 May 2015.

<sup>85</sup> Constance Backhouse, Interview with Pierre-Gabriel Jobin, Montreal, 23 April 2010.

<sup>86</sup> Constance Backhouse, Interview with Darlene Jamieson, Halifax, 19 February 2009, describing a National Association of Women and the Law conference in 1997.

ledge the early women lawyers and judges, “*Hommage à nos pionnières*,” L'Heureux-Dubé again stole the show.<sup>87</sup>

Jack Major readily acknowledged that his colleague's reputation grew dramatically after *Ewanchuk*: “It can't be questioned that during her period on the Supreme Court, she was probably the most recognized judge, and probably had the biggest single following. Criminal lawyers might have liked what Lamer said in different cases, but I think if you were rounding them up, you'd get a bigger crowd for Claire.”<sup>88</sup> Rosalie Abella believed that *Ewanchuk* had made L'Heureux-Dubé a “public persona,” and that the “vilification” she had suffered, combined with her “singularly steadfast commitment to the rights of women, children, and minorities,” had earned her a “place in history.”<sup>89</sup> Arline Pacht, a founder of the International Association of Women Judges (IAWJ), cited *Ewanchuk* when she characterized L'Heureux-Dubé as a “pace-setter” whose denunciation of stereotypes had been an “all too singular voice.”<sup>90</sup> The IAWJ listed *Ewanchuk* as one of L'Heureux-Dubé's most impressive accomplishments when it awarded her its prestigious Human Rights Award in 2012.<sup>91</sup>

The aftermath of the *Ewanchuk* case accelerated a phenomenon that was already underway – the propulsion of Claire L'Heureux-Dubé onto the international stage – and her decisions began to catch the attention of equality-seeking activists and judges across the world. During her last years on the court, she became one of Canada's leading experts on international judicial education, and volunteered months of her time to international organizations. By the time of her retirement, L'Heureux-Dubé had delivered over 240 speeches in locations as far away as Cape Town, Harare, Bangalore, London, Paris, Geneva, Fiji, Cameroon, Jerusalem, Honolulu, Suva, Alabama, Strasbourg, the Czech Republic, Slovakia, Hawaii, Guam,

<sup>87</sup> Constance Backhouse, Interview with Joseph Nuss, Montreal, 14 August 2008.

<sup>88</sup> C. Backhouse, *supra* note 35.

<sup>89</sup> Rosalie Abella, “The Jurisprudence of Claire L'Heureux-Dubé”, *Pamphlet of International Commission of Jurists (Canadian Section) A Tribute*, 2002 (copy on file with the author).

<sup>90</sup> Arline Pacht, “Gender Equality: Thoughts on Causes and Cures for Gendered Victimhood” in Marie-Claire Belleau & François Lacasse with the collab. of DeLloyd J. Guth, eds., *Claire L'Heureux-Dubé à la Cour Suprême du Canada 1987-2002* (Montréal: Wilson & Lafleur, 2004) at 418-420.

<sup>91</sup> “The Honourable Claire L'Heureux-Dubé – A Living Legend” *International Association of Women Judges News*, (5 May 2012) (copy on file with the author).

Auckland, Florence, Turin, Caracas, Wyoming, Durban, Sydney, Delhi, Moscow, Kathmandu, Tulsa, Brussels, Croatia, Moldova, Zimbabwe, Copenhagen, Vienna, Lahore, Morocco, and Buenos Aires.<sup>92</sup> Alberta Chief Justice Catherine Fraser commented: “We’ve had many great judges in Canada, but I don’t think we’ve ever had a judge from this country who has had an international influence like Claire.”<sup>93</sup>

\*  
\*   \*   \*

Claire L’Heureux-Dubé became both a lightning rod and an icon during her years on the Supreme Court of Canada. A woman of “firsts,” who strode through barriers that were erected against gender and ethnicity, she achieved a celebrated status in the late twentieth century that truly earned her the title of a controversial judge on a controversial court in a controversial time.

---

<sup>92</sup> Catherine Fraser, “The Unfinished Journey – the Pursuit of Equality and Law Reform: A Global View” introductory remarks for Claire L’Heureux-Dubé, Toronto, 6 May 2002 (copy on file with the author); List of International Activities prepared by L’Heureux-Dubé, 2014 (copy on file with the author). On the scope of the international activities, see: Backhouse “A Life”, *supra* note 1 at chapters 37 and 38.

<sup>93</sup> Constance Backhouse, Interview with Catherine Fraser, Edmonton, 12 November 2013.